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THE JOURNAL OF PUBLIC AND INTERNATIONAL AFFAIRS

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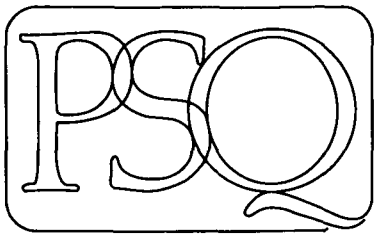

POLITICAL SCIENCE QUARTERLY

THE JOURNAL OF PUBLIC AND INTERNATIONAL AFFAIRS

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From the Editor:

In this issue . . .

MICHAEL L. GROSS examines the arguments that Palestinians and Israelis offer when innocent lives are taken. He challenges Palestinian claims that existential threats (supreme emergency) or reprisals for past wrongs can justify terror attacks on noncombatants. At the same time, he objects to Israeli explanations that invoke the doctrine of double effect and claim that noncombatants are not killed intentionally but die as an unintended side effect of necessary military operations.

BRUCE P. MONTGOMERY explores the legal battle of the General Accountability Office (GAO, formerly the General Accounting Office) over access to information detailing Vice President Richard B. Cheney's national energy task force. He analyzes the politically charged fight, in which the GAO and the White House each sought to use the case as a means to expand its own institutional prerogatives. He concludes that the result was a significant victory for the George W. Bush administration's aim of asserting presidential prerogatives at the expense of congressional oversight.

ANDREW KYDD discusses alternative perspectives on hegemony and cooperation. One emphasizes the credibility of threats to potential rule breakers, the other the fostering of mutual trust and multilateral cooperation. While the first has been central to the Bush administration's foreign policy, the second was important in the early Cold War and remains important today.

DARRELL M. WEST, L. SANDY MAISEL, and BRETT M. CLIFTON assess the effectiveness of reforms designed to improve the quality of American election campaigns. Using an analysis of news, ads, debates, campaign literature, mailings, and other forms of communication during competitive House and Senate contests, they argue that reform activities were not very effective overall at improving the quality of campaign discourse.

MARK WICKHAM-JONES looks at the development of the British Labour Party's electoral strategy during the 1980s and 1990s. He challenges the view that the Party's electoral recovery was a result of the adoption of a Downsian approach. Rather, he emphasizes the importance of the signals used by Labour to secure electoral credibility in the 1997 general election.

DEMETRIOS JAMES CARALEY

CORRECTION

On page 392 of the Fall issue, a footnote was inadvertently dropped by the printer that contained the names of these additional Democratic senators who voted against the Iraq war resolution in the fall of 2002: Daniel Akaka, Jeff Bingaman, Kent Conrad, Jon Corzine, Barbara Mikulski, Richard Durbin, Daniel Inouye, Patty Murray, Jack Reed, Paul Sarbanes, Debbie Stabenow, and Ron Wyden.

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Killing Civilians Intentionally: Double Effect, Reprisal, and Necessity in the Middle East

MICHAEL L. GROSS

The principle of noncombatant immunity is undoubtedly the linchpin of humanitarian law during armed conflict. Recognizing that warfare takes the lives of civilians and other noncombatants, noncombatant immunity limits the harm that noncombatants will inevitably suffer by prohibiting intentional harm in all but perhaps the most extreme cases. At the same time, the rules of modern warfare permit adversaries to unintentionally take a reasonable or proportionate number of civilian lives when militarily necessary. This normative framework, however vague and undefined it may be, forms the basis for assessing the morality of killing civilians during war.

As they attack civilians, belligerents sometimes raise the claim that there are no noncombatants in modern war. It is certainly true that a number of ambiguous actors litter the field in the Mideast. These include reserve soldiers and armed settlers on the Israeli side, and ununiformed militias, "mature" minors, and civilian accessories to the fighting on the Palestinian side. Nevertheless, it is equally clear that many civilians have no role in the fighting. For the purposes of this article, I will limit the discussion to civilians and adopt the definition fixed by the 1949 Geneva Conventions. Civilians are "people who do not bear arms." They are a subset of noncombatants, that is, "persons taking no active part in the hostilities."[1] This definition, however, says nothing about innocence, and civilian leaders may bear far more responsibility for war

[1] Commentary and Article 3, Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, accessed at http://www.icrc.org, 14 September 2005.

MICHAEL L. GROSS is senior lecturer in the Division of International Relations, The University of Haifa, Israel. He is the author of *Ethics and Activism: The Theory and Practice of Political Morality* (Cambridge, 1997) and the forthcoming, *Bioethics and Armed Conflict: Moral Dilemmas of Medicine and War* (MIT, 2006).

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than do simple soldiers in the field. Here, however, I am concerned with the status of what may be called "ordinary" civilians, and although it is true that they may provide succor and support for combatants, they do not bear arms or take an active part in the hostilities. They are, for the most part, also innocent, that is, they are not responsible for prosecuting the war or for the harm befalling enemy soldiers and civilians. Ordinary civilians remain the intended beneficiaries of the principle of noncombatant immunity.

If ordinary citizens ever enjoyed protection from intentional harm, recent events in the Middle East are rapidly eroding this norm and testing the limits of noncombatant immunity. Beginning in 2000, fighting between Israel and the Palestinian Authority (PA) has witnessed the unprecedented use of terror: massive, lethal attacks against civilians for purposes ranging from breaking Israeli morale and wresting further political concessions to destroying the State of Israel. In response, Israel reoccupied the West Bank (and, until 2005, the Gaza Strip), severely curtailed Palestinian civil liberties, and undertook military action resulting in civilian deaths. Each side invokes self-defense and national interest. As Palestinians are repeatedly called upon to renounce the use of terror in their struggle for national self-determination, Israel is censured for indiscriminate and disproportionate harm to civilians. This discourse stands to radically affect the way in which the international community views the imperative to avoid intentional harm to civilians.

Intentionally Killing Civilians

When asked about the use of terror, Mohammed Dahlan, commander of Palestinian security forces in Gaza in 2002, warned Israel that "whoever harms civilians must expect similar responses."[2] Unpacked, Dahlan's argument reveals a multipronged, controversial claim:

1. *Intentionality and its corollary argument, the doctrine of double effect (the DDE), do not matter.* The standard Israeli and, indeed, Western response to Dahlan's argument draws on the DDE and asserts that civilian casualties resulting from Israeli attacks on the PA are foreseen but unintended side effects of a legitimate military operation that is both necessary and proportionate. As a result, civilian casualties do not merit moral condemnation. A reasonable counterargument of the type that might underlie Dahlan's assertion may move in one of two directions. First, it may push intentionality to the sidelines, suggesting that the consequences of an intended act, that is, the death of innocent civilians resulting from an intentional military operation, make Israel morally responsible for the deaths of Palestinian civilians. Alternatively, one may embrace intentionality but argue instead that Israel violates its conditions. In neither

[2] Serge Schmemann, "US Peace Envoy Arrives in Israel as Fighting Rages," *Ha'aretz*, 15 March 2002.

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case are the arguments trivial, for they suggest that Israeli actions are morally blameworthy and may invite legitimate reprisals.

2. *Israeli citizens are the legitimate targets of reprisal.* Once established that there is no moral justification for Israeli attacks on Palestinian civilians, either because intentionality does not matter or because Israel has violated its conditions, Dahlan implies that Palestinian attacks are justified reprisals for morally unjustified Israeli actions. What could this justification be? Dahlan does not say, but if reprisal lies at the core of the argument, then it turns on punishment and deterrence. Although international law increasingly frowns on reprisals against civilians, there is a history of Israeli reprisal raids in response to Arab attacks on Israeli civilians. Why, the Palestinians seem to be asking, can they not undertake similar actions? Alternatively, Dahlan's position might suggest that asymmetry of arms or the prospect of imminent defeat justifies intentional attacks on civilians.
3. *Supreme emergencies justify attacks on civilians as a measure of last resort.* By attacking civilians, Palestinians may not only hope to deter future attacks by Israel but may also hope to break local morale and exert pressure on the Israeli government to acquiesce to Palestinian political demands. This is not a novel argument, but emerged conspicuously during WWII as military planners and civilian observers debated the relative virtues of area bombing. In this debate, any attempt to justify intentional civilian deaths was linked to dire necessity or supreme emergency. In the present context, terror is also tied to asymmetry of arms. Because the Palestinians lack a military capability similar to Israel's, terror bombings are a justified weapon of last resort. The argument complements those characterizing supreme emergency that allow self-defense to override entrenched moral principles and the laws of armed conflict.

The following discussion considers the DDE as it plays out in the Israeli–Palestinian conflict. The doctrine presents difficulties for Palestinians and Israelis alike. Palestinian terrorists intentionally target civilians, whereas Israelis push unintentional harm to its outer limits when they regularly acknowledge, and regret, killing civilians in the course of military operations. If *unintentional* harm drives the DDE, *intentional* harm remains the explicit and often acceptable goal of reprisals and actions taken during supreme emergencies. The extent to which reprisals and necessity justify the deaths of civilians in the current conflict is the subject of the final two sections.

Intentionality and the DDE

"Perhaps the most basic rule of the law of armed conflict is that civilians and civilian objects must not be made the object of direct attack, although

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incidental injuries caused to such persons or objects in the course of a legitimate attack must be proportionate to the purpose of the attack."[3]

The moral intuition underlying this basic rule is enshrined in the DDE. If its original task was theological, the DDE quickly evolved into a secular principle of just war, allowing combatants to kill civilians as long as their cause is just and noncombatant deaths are an unintended, although foreseen, side effect of a necessary and proportionate military operation that produces less harm than one reasonably hopes to forestall. Armed with these provisions, belligerents feel morally insulated when they kill civilians in the name of military necessity and a just cause.

Although adversaries in a conventional war generally have no particular interest in killing civilians, the DDE allows them to do so under what appear to be carefully controlled circumstances. In reality, the DDE may be excessively lax, allowing the killing of civilians whenever their deaths accompany military action. Perhaps because it has been so lax, or perhaps because it has allowed each side to pursue roughly equivalent levels of civilian deaths with minimal moral consternation, conventional combatants have rarely questioned the DDE in the same way that terrorist and insurgent organizations are now doing.[4] For a long time, combatants on each side have used the DDE to justify the inevitable killing of civilians during wartime. The argument packs a powerful moral and practical punch. On one hand, a compelling moral principle linking intentionality with responsibility and liability stands behind the DDE. Lack of intention retains, as the early Christian theologians noted, a "pure heart" and attenuates moral responsibility, liability, and guilt because one's motives are good.[5] Practically speaking, the DDE offers a convenient argument for harming civilians when their welfare conflicts with military necessity and, at the same time, it sets the conditions for protecting noncombatants from indiscriminate harm.

The force of the DDE is often demonstrated by comparing the actions of two agents, a strategic bomber (SB) and a terror bomber (TB). SBs destroy military targets in order to hasten the end of the war. In doing so, they often kill

[3] Leslie C. Green, *The Contemporary Law of Armed Conflict*, 2nd ed. (Manchester, UK: Manchester University Press, 2000), 124.

[4] I use the word "insurgents" to describe Palestinian forces engaged in armed combat against Israel. Defined by the Oxford English Dictionary as one who "rises in active revolt," "insurgent" also captures the meaning of the word "*Intifada*" (uprising) that the Palestinians use to describe their conflict. Insurgent forces include terrorists and members of the various Palestinian security forces and militias. The latter are lawful combatants, insofar as their military organizations maintain an "internal disciplinary system," enforce "compliance with the rules of international law applicable in armed conflict," and commit their soldiers to carrying their arms openly during military engagements, although not necessarily to wearing identifying uniforms or insignia (Protocol I, 1977, Articles 43, 44). Terrorists are those insurgents who indiscriminately and intentionally target civilians and wantonly violate the laws of armed combat.

[5] Robert L. Holmes, *On War and Morality* (Princeton, NJ: Princeton University Press, 1989), 193–200.

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civilians, whose deaths are unintended but foreseen. TBs aim at population centers. Their purpose is to kill civilians, destroy their infrastructures, and weaken enemy morale in order to hasten the end of the war. They aim intentionally at civilians. The British bombing of Germany during WWII is the example commonly cited. The DDE explains why the unintentional harm that strategic bombing causes is permitted, whereas the intentional harm that terror bombing causes is not.

In the present Mideast context, however, strategic and terror bombing assume a different character. Strategic bombing represents any Israeli action to destroy a Palestinian military target. These targets are not large military installations but often include single individuals or groups of individuals, bomb-manufacturing plants, or police and military installations. In nearly all cases, these targets are nested in built-up, civilian areas. Terror bombing, by contrast, aims specifically at civilian targets and is carried out by suicide bombers, by cells planting explosive devices or car bombs, or by squads that attack civilians with small arms. Unlike the area bombers of WWII, they make no claim to destroy infrastructures of any kind.

By the simple logic of the DDE, TBs kill their victims intentionally and are therefore morally responsible and criminally liable for their deaths, whereas SBs do not and are therefore absolved of responsibility and liability. The DDE only holds sway, however, when each side accepts its logic and is more or less equally equipped to wage war with minimal involvement of noncombatants. Terrorists and insurgents, however, attack the logic of the principle. Intentionality does not matter or, perhaps more realistically, no one unintentionally kills civilians.

The DDE and Intentionality: Does Intentionality Matter?

In its original formulation, the DDE confronted a rather simple difficulty that adversaries faced during war: how could one justify killing civilians who were innocent but inevitably harmed during armed conflict? The answer turned on intentionality. It was permissible only insofar as one did not *intend* to harm them. Early Christian theologians believed that without intent, it was possible to allay responsibility. It was never entirely clear, however, what intentional harm meant or how one could determine whether one harmed another intentionally, particularly during war. If intentionality only meant *rens mea*, an evil mind, then the DDE would be particularly difficult to apply in practice. One could easily ask how anyone can know whether SBs act with good intentions or whether TBs, for that matter, act with evil ones.

Modern legal and moral theorists wrestle with similar difficulties and often limit the exculpatory power of good intentions. Good intentions may, at best, mitigate punishment; they do not necessarily redeem the badness of the act itself. "We may judge the [bomber] pilots differently," writes Robert Holmes, "if we believe that one acted with good intentions and the other with bad

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intentions. But the fact of their different intentions would not affect the moral assessment of *what* they did."[6] If intentions are particularly difficult to ferret out in wartime and, at best, only mitigate punishment, it is not entirely clear what intentionality adds to the DDE and the general prohibition against killing civilians.

H. L. A. Hart, for example, describes the case of an Irish Nationalist (IN) who inadvertently kills civilian bystanders while blowing out a wall to free his friends from prison.[7] IN did not intend to kill anyone; the deaths he caused were not a means to his end but only an "undesirable byproduct" of his actions. Nevertheless, he was, in Hart's opinion, rightfully convicted of murder. Hart's view is intuitively appealing, for clearly, an agent should be liable for the harmful effects of an intended action, however unintended the effects may be. It is difficult to see, then, why SB should not be convicted of killing civilians and how he could turn to the DDE to not only mitigate his punishment but to erase the badness of the act itself. The only difference between SB and IN is, if anything, the good end that SB invokes; their intentions are equally pure. Because neither intends to kill civilians, we are left judging the act not by intention but by the goodness of goal. The DDE masks, in this case, an enlightened principle of "the ends justify the means," insofar as the ends are good, a condition usually augmented by two others: the good end must not be attained by evil means, and the accompanying harm, if any, must be proportionate to the good one seeks and minimized where possible.

Although all three conditions are commonly associated with the DDE, only the second, the obligation to avoid evil means, may distinguish between TB and SB. Just cause (that is, a good end) is reasonably claimed by most adversaries. This is certainly true in the Mideast conflict, inasmuch as Palestinians claim the right to national self-determination and Israelis claim the right to self-defense in response to terror. Each adversary also appropriates proportionality with equal zeal. Moreover, proportionality is most often a subjective determination, nothing more than "I know it when I see it," whereas the imperative to minimize harm is only uncontroversial when choosing between two equally effective actions.

Steering clear of evil means to attain one's end, on the other hand, is often identified—some scholars say confused—with intentionality. Supporters allow an agent to invoke the DDE if, among other things, he or she does not use evil means to attain a good end. Consider Hart's example. Why was IN convicted of murder? Hart does not say, but one reason might be that IN violated the DDE by pursuing a bad end, at least in the eyes of those who judged him. Another reason may be IN's failure to minimize harm. Each of these is a subjective

[6] Ibid., 199.

[7] H. L. A. Hart, *Punishment and Responsibility, Essays in the Philosophy of Law* (Oxford: Oxford University Press, 1968), 119–120.

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determination. IN's peers, for example, would most likely have exonerated him on the same counts. The same peers, however, might not have looked as kindly upon their fellow nationalist had he murdered the same civilians who were unintentionally killed in order to gain the release of their comrades. Murder would push IN across the line, even in the eyes of those who sympathized with his cause. Similarly, although TB might claim proportionality and a good end, he remains morally culpable, because he cannot claim that his means—killing civilians—are good.

Here we must ask whether intentionality plays any role at all. Consider again TB's dilemma. Although he thinks his ends are good and the harm he causes is proportionate, "he cannot claim that his means—killing civilians—are good." At this juncture, critics would argue that it simply makes no sense to talk of "*intentionally* killing civilians" in this context or, at least, that it adds nothing of moral significance to the conditions necessary to prohibit TB's or IN's actions. Their actions stand or fall on the goodness (or badness) of the end they adopt, the means they pursue, and the degree of harm they cause. The moral repugnance of TB's action, in this view, lies not in the agent's intention or malevolent state of mind but in the fact that he uses inherently evil means to realize his end. Intentionality, for all intents and purposes, does not matter and, for this reason, some observers regard the DDE as incoherent, superfluous, or otiose.[8]

The argument focusing on the actual means an agent employs is important, for it sidesteps the problem of subjectivity or determining the agent's state of mind before one can invoke the DDE, and directs one's attention to the act, as opposed to the agent. Rather than dispensing with the DDE entirely, however, it may be more fruitful to adopt a principle that condemns TB because he uses evil means to obtain his ostensibly good end. This, and not the agent's state of mind, offers a richer and more easily operationalized formulation of intentionality that allows observers to identify violations of the DDE.

The DDE and Intentionality: An Operational Definition

Whether we dispense with intentionality altogether or define it in terms of using evil means to obtain a good end, one is still left to determine criteria for identifying both "evil means" and "use." What means, in other words, are evil, and how do we know when SB or anyone else is using them?

Harming civilians constitutes the evil means addressed by the DDE. This includes not only death and injury directly caused by military action but also indirect effects of war: destitution, disease, lawlessness, and insecurity. Neither

[8] Alison MacIntyre, "Doing Away with Double Effect," *Ethics* 111 (January 2001): 219–255; Holmes, *On War*, 199.

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type of harm can be a legitimate means to an end, however good. Although extreme harm—killing—remains the focus of the DDE, the evil is not in the killing itself but in using the death of civilians for another purpose. Observers frequently express their abhorrence of this type of exploitation. Hart, for example, suggests that actions similar to TB's elicit a "feeling that to use a man's death as a means to some further end is a defilement of the agent: his [a murderer's] will is thus identified with an evil aim that is somehow morally worse than the will of one who, in the pursuit of the same further end, does something which, the agent realizes, renders the man's death inevitable as a second effect."[9] Here is the underlying intuition of the "double" effect. The moral consequences of the "second effect" are cushioned, not so much because it is unintended but because it serves no purpose in the agent's plans.

Warren Quinn fleshes out the argument further. The critical question is whether "the victims are made to play a role in the service of the agent's goal that is not (or may not be) morally required of them and this aspect of direct agency adds its own negative moral force—a force over and above that provided by the fact of harming or failing to prevent harm."[10] Commenting on Quinn's view, Jeff McMahon suggests that "intention simply magnifies the wrongness of violating a pre-existing right."[11] This moral fact is decisive for Quinn, who readily points out that an SB "perhaps . . . cannot honestly say that this [harmful] effect will be 'unintentional' in any standard sense, or that he 'does not mean' to kill them. But he can honestly deny that their involvement . . . is anything to his purpose."[12]

These lines of thinking form the basis for a richer interpretation of intentionality that forms a firm criterion for distinguishing the actions of SB and TB. Intentionally killing civilians means using them without their consent or against their will to procure one's ends. Defining intentionality in this way allows one to search for violations of the DDE not in the agent's subjective intentions or motives but in his plans and the means he uses to achieve them. The "acid" test of intentionality is whether agents profit from the evil effect in any way.[13] Susan Uniacke calls this the test of failure: would the mission fail if the harmful effects were avoided? In the case of SB, the answer is no, but in the case of TB, the answer is yes: TB cannot succeed unless he kills innocent civilians.[14] As a result, TB intentionally causes harm and violates the DDE. TB is morally responsible for killing civilians, and his act is reprehensible.

[9] Hart, *Punishment and Responsibility*, 127.

[10] Warren S. Quinn, "Actions, Intentions and Consequences: The Doctrine of the Double Effect," *Philosophy and Public Affairs* 18 (Fall 1989): 334–351.

[11] Jeff, McMahon, "Revising the Doctrine of Double Effect," *Journal of Applied Philosophy* 11 (1994): 207.

[12] Quinn, "Actions," 342.

[13] A. J. Coates, *The Ethics of War* (Manchester, UK: Manchester University Press, 1997), 244.

[14] Susan Uniacke, "Double Effect, Principle of" in Edward Craig, ed., Routledge Encyclopedia of Philosophy (London: Routledge, 1989), 202. Some philosophers also have suggested that TB, like SB,

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Understanding the DDE in this way also repudiates Mideast terror: if TBs force their victims to play a role that they have not consented to and which is not required of them and benefit directly from their victims' deaths, then their acts violate the DDE and are morally objectionable. Regardless of the justice of their cause, terrorists have used evil means to achieve their end. Although this easily condemns Palestinian TBs, it is doubtful that most terrorists sincerely claim that their means are good. Instead, their argument is more nuanced, asserting that the injunction against using an evil means—killing civilians—is not absolute and may be overridden when one is faced with supreme emergency or the need to reprise against similar actions. These claims are considered shortly. To make these claims, however, particularly the latter, Palestinian TBs must argue that Israeli SBs similarly violate the DDE. To do this, they must argue that SBs also benefit from civilian deaths.

Intentionality and Side Benefits

Establishing intentionality according to the benefits gained from unintentional civilian deaths raises serious and sometimes fatal difficulties for SBs. While versions of the DDE espoused by Quinn or Uniacke may serve to distinguish between a simple case of SB or TB, the situation on the ground in the Mideast is more complex. Rarely is it the case, particularly in limited wars in built-up areas, that civilian deaths do not carry benefits independent of those obtained when the target that civilians are unlucky enough to live near is destroyed. Counter-insurgency measures, including unintended but foreseen civilian deaths, are sometimes expected to unbalance the civilian population and drive a wedge between terrorists and their local base of support. Although one may not set out to harm civilians for this purpose, one may clearly benefit when civilians are killed as part of a military operation.

Moreover, Israelis readily acknowledge the benefits of collateral damage. Consider the following two cases of side benefits that result from the bad effect of an intended action.

1. "The deaths of women and children during IDF operations against wanted men has become routine . . . but this week a senior officer was

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does not actually need to cause civilian deaths in order to demoralize the enemy and hasten the end of the war. All TB requires is the *appearance* of their death. McMahon, "Revising the Doctrine," 202. "If, unbeknownst to the government, the civilians were to escape harm by hiding in deep shelters until after the surrender, this would not frustrate the terror bomber's plan." (The *Hizbollah*, for example, will often leave the impression of having killed their victims without ever confirming that this is so. They have created the appearance of death necessary to undermine enemy morale without necessarily having actually killed anyone. Something like this occurred when they kidnapped three Israeli soldiers in 2000. A year later, the Israeli army declared the soldiers dead but only recovered their bodies in 2004. While the *Hizbollah* sought to trade information about the soldiers for captives held by Israel, the action undoubtedly affected the morale of soldiers serving on the Lebanese border. Their morale was equally undermined regardless of the state of health of the those kidnapped earlier.

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even quoted, in response to the civilian deaths in Al Bureij (fighting in the Al Bureij refugee camp killed 10 Palestinians and wounded 20), as saying that a 'large number of casualties has deterrent value.'"[15]

2. Following a period (9 November to 31 December 2000), during which Israeli forces assassinated nine Palestinian militants while killing six civilian bystanders and injuring two, one Israeli official remarked: "The liquidation of wanted persons is proving itself useful.... This activity paralyzes and frightens entire villages and as a result, there are areas where people are afraid to carry out hostile action."[16]

In each instance, there is a direct or indirect reference to deterrent benefits that civilian deaths bring. Do these admissions lend credence to the claim that Israeli actions are morally on a par with terror attacks? If benefit is the sole test of the DDE and the principle fails when there are side benefits to collateral damage, then the answer appears to be yes.

The question remains, however, whether intentionality is any richer than the criterion of side benefits implies. What if the side benefit is unintended or one takes steps to avoid collateral damage that nonetheless benefits SB? Can an unintended ex post benefit impugn the moral standing of SB? The DDE allows unintended harm; after all, that is its purpose, but does it allow unintended side benefits? One might be inclined to argue that it does not, for unintended side benefits are the very test of intentional harm and ferret out intentionality when it is not obvious or is disclaimed by the agent. When side benefits are present, SB cannot deny that civilian deaths were anything to his purpose.

Some readings seem to support this contention:

1. "The good effect must be produced directly by the action, not by the bad effect. Otherwise, the agent would be using a bad means to a good end, which is never allowed."
2. "The bad cannot be a means to the good."
3. "To arrive at a sound moral estimate ... it is often useful to consider whether the evil effect *de facto* contributes to the ultimate good desired, even if not explicitly willed as a means."[17]

Each of these readings suggests that unintended side benefits violate the DDE. Quinn's analysis is also ex post: SB satisfies the DDE because he can honestly deny that civilian deaths are anything to his purpose. But what if he cannot deny this? What if civilian deaths contributed to his purpose? If so, he is then using a bad means, however unintended, to a good end.

[15] Ruevan Pedazur, "The Wrong Way to Fight Terrorism," *Ha'aretz*, 11 December 2002.

[16] Eldar Akiva, "Liquidation Sale for the Peace Process," *Ha'aretz*, 4 January 2001.

[17] McIntyre, "Doing Away," 229, citing the traditional DDE; Holmes, *On War*, 199; John C. Ford, "The Morality of Obliteration Bombing" in Richard A. Wasserstrom, ed., *War and Morality* (Belmont, CA: Wadsworth Publishing, 1970 [1944]), 27.

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Unintended side benefits, therefore, violate the prohibition of intentionally harming civilians.

Yet, the issue is not so easy to resolve. Israeli soldiers who shelled Arab villages in 1948 were witness to a mass exodus that later brought clear political and strategic advantages. Yet their purpose was to capture a strategic position and win the war, not to expel local residents. Later, Israeli forces intentionally undertook and/or condoned isolated acts to encourage evacuation when it was understood that population displacement had clear strategic benefits.[18] Corresponding roughly to SB with unintended side benefits and TB, these seem to be distinct moral categories, yet both, according to the reading above, violate the DDE in the same way. One practical solution might be to sidestep the problem with the observation that unintended side benefits do not remain unintended for long. Once acknowledged, any action resulting in civilian deaths with known side benefits violates the DDE. Thus, if the observations noted above underlie a trend among Israeli policy makers, then they have violated the DDE despite the fact that civilian deaths do not contribute to the primary mission. One cannot acknowledge side benefits the first time and then claim the second time that they are unintended. By itself, this realization can go a long way toward limiting collateral damage.

But can we push further and argue, as the citations above suggest, that unintended benefits also violate the DDE? This certainly invokes the spirit of the DDE, which, it must be remembered, is a principle designed to protect civilians from harm. At its core, the DDE assumes that any harm to innocents is morally bad, and it therefore sets strict conditions where their welfare is concerned. To condemn unintended harm that brings unintended benefits limits permissible harm to "pure" cases of military necessity in which civilian casualties play absolutely no part. But these pure types, SB or TB, are illusory. Arthur Harris's bombing campaign during World War II was never called "terror" bombing but "area" or "saturation" bombing. Critics called it "obliteration" bombing: "*strategic* bombing of industrial centers of population, in which the target to be wiped out is not a definite factory, bridge or similar object, but a large section of a whole city, comprising one-third to two-thirds of its built-up area, and including by design the residential districts of workingmen and their families."[19] Area bombing was, in other words, SB with intended side benefits that included the destruction of civilian population centers and, was, therefore, prohibited by the DDE and contemporary international humanitarian law. "Precision bombing," on the other hand, characterized Allied attempts to destroy German military targets but, owing to the imprecision of their instruments or the difficulties posed by night-time bombing, it often brought significant civilian causalities.

[18] Benny Morris, *Righteous Victims: A History of the Zionist–Arab Conflict, 1881–1999* (New York: Knopf, 1999), 161–258.

[19] Ford, "The Morality of Obliteration Bombing," 24, emphasis added.

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Just as area bombing has strategic value, precision bombing also has terror value. The situation is exacerbated in insurgency warfare, in which any attack on a strategic target may cause civilian casualties together with side benefits measured in broken morale, population displacement, and internal dissent. To rule out unintended harms that bring unintended side benefits would severely limit the scope of counterinsurgency warfare and conventional aerial bombardment. The DDE would effectively become a pacifist doctrine.

In one more sense, the idea of unintended side benefits is unworkable. In fact, the entire idea of side benefits deriving from harm to civilians is problematic. Throughout the entire discussion, we have assumed that harm to civilians has beneficial effects relative to the war aims of the bomber. Terror bombing makes this assumption, as did the Israeli officials cited above. However, as many observers repeatedly point out, this is usually not the case. Area bombing failed to affect, and may have even strengthened, German morale.[20] Thus, to invoke side benefits to test the DDE demands a test for efficacy, which is usually unavailable and, if history is any example, nearly always negative. Under these circumstances, there is no reason to assume that collateral harm to civilians has any long-term benefits whatsoever. If it has no benefit, then unintentional harm to civilians *cannot* violate the DDE. We now have no reasonable test of intentionality and the DDE collapses.

If it is impossible to evaluate the side benefits of strategic bombing, or if empirical data are so contradictory that the DDE is either so eviscerated or so fortified as to be rendered useless, then the test for the DDE can only be found in *intended* benefits or *expected* utility, that is, those benefits that the SB or his planners think or hope will accrue when civilians are unintentionally harmed during a mission to destroy a strategic target. In this regard, then, Quinn's caveat stands: one looks to the extent to which one *tries* to involve civilians in one's cause when they are not morally required to participate. Whether they ultimately help or hinder the cause is not a relevant test of the DDE.

Defining intention in this way may suggest that we have not come very far. Intended side benefits are as subjective and as difficult to determine as is intentional harm. In both cases, observers are dependent upon the admissions of the perpetrators. The fact remains, however, that the admissions are qualitatively different. Few officials or soldiers could admit to intentionally harming civilians without risking the acknowledgement of a grievous breach of humanitarian law and the violation of their own moral sensibilities. They are less reticent, however, about recognizing the deterrent benefits that come from the harm civilians suffer during legitimate military operations. Indeed, military

[20] Ibid.; Geoffrey Best, *Humanity in Warfare* (London: Methuen, 1980), 242–285; Biddle Tami Davis, "Air Power" in Michael Howard, George J. Andreopoulos, and Mark R. Shulman, eds., *The Laws of War: Constraints on Warfare in the Western World* (New Haven, CT: Yale University Press, 1994), 140–159; Frits Kalshoven, *Belligerent Reprisals* (Leyden: A. W. Sijthoff, 1971); George H. Quester, "The Psychological Effects of Bombing Civilian Populations: Wars of the Past" in Betty Glad, ed., *The Psychological Dimensions of War* (Newbury Park, CA: Sage Publications, 1990), 201–235.

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planners may find it useful to quietly acknowledge side benefits by suggesting that civilian deaths are neither futile nor entirely unfortunate, both to allay guilt among the bombers and to enhance pacification of the enemy. Here the DDE is particularly important, for it prohibits this line of argument. Side benefits do not mitigate the harm unintentionally befalling civilians. Quite the opposite; when policy makers believe or expect that their strategic bombing has side benefits that come from harm to civilians, they can no longer say that they do not intend to harm civilians. It is then, time to invoke the DDE and prohibit strategic bombing of this sort.

At this juncture, then, there are grounds to argue that Israeli SBs violate the DDE. Israeli actions against Palestinian military targets kill civilians, and this may be inevitable, but once these attacks take notice of the benefits they produce, they violate the DDE and are subject to censure. Are they also subject to reprisal?

Intentionally Targeting Civilians: The Doctrine of Reprisal

As the Israeli case shows, it is often difficult to justify collateral harm to civilians that accompanies counterinsurgency warfare, particularly when this harm is beneficial to the counterinsurgent's cause. In this respect, terror bombing and strategic bombing with intended side effects are equally bad acts. Equally bad acts, in turn, open the door to retaliation and reprisals against civilians. By this argument, civilians retain their protected status but the unique logic of reprisals allows one side to override noncombatant immunity and deliberately target civilians. Reprisals are one of the rare instances in which belligerents are allowed to intentionally harm civilians. Supreme emergency, considered below, is another.

The Logic of Reprisal

Arguments that Palestinian terror attacks are reprisals for Israeli actions or that Israeli attacks on Palestinian terrorists are reprisals for terror are not easily disentangled. The Palestinians, for their part, make the explicit argument that terrorist attacks are reprisals for Israeli attacks on civilians. A nation would not have the right to reprise against attacks on civilians that are sanctioned by the DDE, but if the DDE fails to justify civilian deaths, as in some of the cases noted above, then belligerents may be vulnerable to reprisal.

The principle of "self-help" anchors reprisal and the right of a belligerent to violate the laws of war as a last-resort response to a prior violation by the other side.[21] Reprisals are not acts of ordinary self-defense, for they are an inherently

[21] Kalshoven, *Belligerent Reprisals*; Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 207–222; Burton M. Leiser, "The Morality of Reprisals," *Ethics* 85 (January 1975): 159–163; Andrew D. Mitchell, "Does One Illegality Merit Another? The Law of Belligerent Reprisals in International Law," *Military Law Review* 170 (December 2001): 155–177.

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unlawful response to past, discrete, and unlawful acts. Nor is retribution or vengeance the primary purpose of reprisal. Rather, reprisals are forward looking; they aim to prevent similar, unlawful acts in the future and to restore compliance to international norms of behavior. The underlying logic is utilitarian: reprisals are a legitimate form of international law enforcement because they force violating states to comply with international law. Reprisals, therefore, form a carefully circumscribed form of warfare restrained by strict proportionality. They are guided by the magnitude of the initial infraction, not the goal of deterrence, which, admittedly, might demand far harsher measures than a proportionate response to an adversary's breach of law. This reinforces the one-shot nature of reprisals. Justified by an unlawful act of war, but unlawful acts themselves, reprisals cannot exceed the illegality of the initial infraction. To do otherwise only creates grounds for counterreprisals.

Reprisals against Civilians

Civilians have not always enjoyed protection from the strong urge to reprise against noncombatants. Although the 1949 Geneva Conventions safeguard the lives of civilians in occupied territories, only the 1977 Protocols to the Geneva Conventions, Articles 51–58, protect enemy civilians and civilian objects (property, cultural sites, and places of worship) in unoccupied territory from reprisal. With Protocol I, the international community prohibits reprisals absolutely. Yet some nations, particularly the powerful industrial nations of the West, have been slow to relinquish the right of reprisal. The United States, for example, refused to ratify Protocol I because, among other things, "the total elimination of the right of reprisal . . . would hamper the ability of the United States to respond to an enemy's intentional disregard of the limitations established in the Geneva Conventions of 1949 or Protocol I."[22] Although Britain, Italy, France, and Germany ratified Protocol I, each, to varying degrees, reserved the right take measures otherwise prohibited by Protocol I and retaliate against the civilian population of any nation egregiously violating noncombatant immunity.[23] Commenting upon these reservations, Frits Kalshoven cautions that they may set aside a nation's obligation to refrain from reprisals "when the situation turns really serious: a 'worse case reservation' so to speak." The same developments lead Christopher Greenwood to conclude that the "trend in international law against belligerent reprisals has now been taken further than the development of international society can really justify." Ultimately, he warns, the provisions regulating reprisals are "too restrictive

[22] Abraham Sofaer, "Agora: The US Decision not to Ratify Protocol 1 to the Geneva Conventions on the Protection of War Victims (contd): The Rationale of the United States Decision," *American Journal of International Law* 4 (October 1988): 784–787.

[23] See "States, Parties and Signatories," accessed at http://www.icrc.org/ihl.nsf/WebNORM?OpenView&Start=1&Count=150&Expand=52.1#52, 14 September 2005.

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and likely to be ignored in a conflict marked by large-scale violations of the law by one or more parties."[24]

Reprisals remain attractive for several reasons. One is efficacy: military planners often assume that reprisals against civilians are an effective tool for forcing nations to observe international law. Another is the oft-repeated reference to *lex talonis*, retaliating with evil for evil. This is the simplest reading of Dahlan's warning cited earlier: you kill our civilians and we will kill yours. Although modern treatises on reprisal gloss over *lex talonis* on the assumption that it is but a remnant of primitive law, there is no doubt that targeting civilians in reprisal for unlawful acts of war, particularly those aimed at civilians to begin with, retain a certain appeal based not on vengeance but on simple justice. Civilian lives are precious assets and, if targeted, certainly invite reprisals in kind. Nevertheless, sound moral reasons remain to limit the scope of reprisals while nonetheless permitting recourse to certain forms of reprisal beyond those envisioned by Protocol I.

Limiting Reprisals against Civilians

Utilitarian and deontological arguments go a long way toward discrediting reprisals against civilians. Reprisals are subject to two basic principles of just war: the limited nature of war and the principle of noncombatant immunity. If modern wars are fought to disable rather than annihilate an enemy, they are, in principle, limited. Any practice, therefore, that unnecessarily extends a war or prevents its conclusion is morally objectionable. To meet the condition of limited warfare, reprisals must be effective and must not spiral into a bloody cycle of vengeance and retaliation that only serves to perpetuate hostilities. Unfortunately, reprisals often do just that. The psychological urge to pay back in kind, or worse, is difficult to overcome, and it is doubtful that reprisers would or could respect the rule of proportionality: "You don't understand the logic of vengeance," Claudio Monteverdi admonishes, in *The Coronation of Poppea*: "on every slight pay back in blood and slaughter."[25] Moreover, one cannot seize upon legal lacunae that fail to fully protect civilians from certain acts of war to make a moral argument. If civilian immunity is to have any meaning whatsoever, then ordinary civilians cannot be made to pay for the crimes of others, regardless of the actions of one's state (or quasi-state). Similarly, one

[24] Frits Kalshoven, "Belligerent Reprisals Revisited," *Netherlands Yearbook of International Law* 21 (1990): 67; C. Greenwood, "The Twilight of the Law of Belligerent Reprisals," *Netherlands Yearbook of International Law* 20 (1989): 61, 65.

[25] Less poetically: "The psychological reality prompting [reprisals] was often merely thirst for revenge, lust to hurt and punish, or simply self-indulgent desire to save trouble [that] unless carefully regulated tended to escalate into horrid spirals of cruelty and counter-cruelty"; see Best, *Humanity of War*, 167. See also Bryan Brophy-Baermann and John A. Conybeare, "Retaliating against Terrorism: Rational Expectations and the Optimality of Rules vs. Discretion," *American Journal of Political Science* 38 (February 1994): 196–210; and Kalshoven, *Belligerent Reprisals*, 214.

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cannot look forward and justify killing one group of civilians to prevent the killing of another group in the future. In neither case has the targeted group lost its right to life. This is the single strongest argument against civilian reprisals and should thoroughly repudiate any attempt by Palestinians to target Israeli citizens in reprisal for Israel's violation of the DDE.

These considerations leave reprisers to target other assets of the offending state. Inasmuch as the military assets of the state are generally vulnerable during wartime and are subject to destruction without moral compunction, the only remaining targets are assets that belong to civilians: their property and their civil rights. Although Protocol I outlaws these targets, together with attacks on civilian lives, the destruction of civilian property and other forms of nonlethal harm remain the last refuge of legitimate reprisal if we take human rights seriously.

Legitimate Reprisal

Israel's policy in response to terror attacks in the Occupied Territories exemplifies some of the limits of legitimate reprisal. These encompass the destruction of property and periodic destruction of physical infrastructures of a nonmilitary nature, measures aimed against civilians short of killing and assassination. Although Israel has argued—unconvincingly, to many observers—that assassinations or targeted killings are legitimate acts of self-defense during wartime, it may be more fruitful to view them as a form of reprisal. Perfidious and treacherous, there are good reasons to conclude that assassination is unlawful.[26] Yet in response to attacks on Israeli civilians, it makes for a legitimate reprisal, even within the narrow parameters of Protocol I, which permits reprisals against military targets: assassination is an "in kind" response to an unlawful act, its aim is to deter future unlawful acts, and it is a proportionate act that aims, unlike most reprisals, at responsible parties operating within an adversary's armed forces. At the same time, there are reasonable efforts to minimize collateral damage.[27]

Acts against civilians that deny civil rather than human rights or aim at civilian property may also form the basis for legitimate reprisals. Human rights protect dignity, innocent life, and bodily integrity and are generally inviolable. Civil liberties, however, remain the purview of the state and include the right of assembly, movement, speech, and political participation. These are not inviolable but, rather, derogable rights and may be set aside or modified, particularly when human rights are at risk. Such is often the case during war.[28]

[26] Michael L. Gross, "Fighting by Other Means in the Mideast: A Critical Analysis of Israel's Assassination Policy," *Political Studies* 51 (June 2003): 350–369.

[27] These efforts are not always successful. According to B'tselem, forty-two civilians were killed and eighty-six Palestinians were assassinated. "Fatalities in the al-Aqsa Intifada, 29 September 2000–15 February 2003," accessed at http://www.btselem.org/, 18 February 2003.

[28] See also John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 79–80 for a similar distinction. A liberal society upholds human and civil rights, whereas a decent society need only respect human rights. For Rawls, human rights roughly encompass articles 1–18 of the Universal

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Unlawful acts by a state, as reprisals are, cannot deprive civilians of their human rights, but they can deprive them of their civil liberties and restrict their freedom of movement. In many ways, Israeli policies of expelling terrorists and their supporters (and families), destroying their homes, and, in general, restricting civilian movement to thwart and apprehend terrorists are reprisals against the citizens of a state that practices terror. Note, however, that reprisals against the civil liberties of civilians do not have the "one-shot" character of expulsions or property destruction pursued against specific individuals in response to specific acts of terror. Restricting the civil liberties of many civilians is continuous and, in this sense, may function as a measure of self-defense rather than reprisal. But this is not always easy to determine. The closure and encirclement of West Bank villages sometimes follow a specific terrorist act; in other instances, they are preventive and are undertaken in anticipation of terrorist activity. Moreover, reprisals against civil liberties are not strictly "in kind." If terrorists deprive their victims of basic human rights, that is, the right to life, reprisals deny civil and property rights, that is, the maximum harm civilians may suffer.

The Limits of Legitimate Reprisal

Reprisal theory has long been noted as a back-door justification for unlawful acts that cannot otherwise be defended. Nevertheless, it does offer legitimate recourse to unlawful action if reprisals are responses to unlawful acts, avoid targeting civilian lives, and are reasonably effective. In the context of Israeli policy, these conditions show just how far one might push reprisal theory. Although reprisals may restrict civil liberties but may not infringe upon human rights, there is no doubt that encircling Palestinian cities and restricting civilian movement creates economic hardship and distress. Reprisals, however, breach their limits when they cause avoidable civilian deaths, as they do, for example, when closures and other measures restricting free movement deny civilians access to medical care.[29] Moreover, reprisals may not directly risk the lives of

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Declaration of Human Rights. The International Covenant on Civil and Political Rights (1976, Article 4) is less restrictive. The only nonderogable rights during war or public emergency include the right to life, freedom from torture, slavery, servitude, and retroactive legislation, freedom of conscience, the right to recognition before the law, and the right to not to be imprisoned for breach of contract.

[29] Human rights organizations document avoidable deaths due to delays at roadblocks as well as increased rates of infant mortality among Palestinians. See Physicians for Human Rights, "Targeting Medical Care: Israel's Recent Incursion into the West Bank Renews Attacks on Ambulances" 4 April 2002, accessed on the website of Physicians for Human Rights, Jerusalem, at http://www.phr.org.il/phr/article.asp?articleid=198&catid=41&pcat=5, 14 September 2005; B'Tselem, The Israeli Information Center for Human Rights in the Occupied Territories, "Wounded in the Field: Impeding Medical Treatment and Firing at Ambulances by IDF Soldiers in the Occupied Territories," accessed on the website of B'Tselem at http://www.btselem.org/Download/200203_Medical_Treatment_Eng.pdf, 14 September 2005; B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, "No Way Out: Medical Implications of Israel's Siege Policy," accessed on the website of B'Tselem at http://www.btselem.org/Download/200106_No_Way_Out_Eng.doc, 14 September 2005.

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civilians, and although civilians die when assassination attempts go awry, there is increasing concern that these military actions indirectly target civilians to achieve the side benefits described in the previous section. As belligerents cross these lines, it is increasingly difficult to justify reprisal.

However, the strictest limit imposed on reprisals of any kind is effectiveness, and, as many scholars have argued, reprisals are notoriously ineffective.[30] This is no less true in the Israeli case. Assassination, whether construed as self-defense or legitimate reprisal, often brings swift retaliation by Palestinian terrorists. On at least two occasions, in November 2001 and January 2002, assassinations shattered periods of relative quiet, escalated violence, and resulted in scores of dead on both sides. Moreover, the efficacy of reprisal measures against civilians, particularly closure, curfew, expulsions, and the destruction of homes, is open to conflicting interpretations. In early 2003, the Israel Defense Forces announced a turning point in the war against terror, citing a significant decline in the number of successful terror attacks since massive military intervention in April 2002 and, in particular, since the reoccupation of the West Bank in late June 2002.[31] Nonetheless, and in spite of a policy that severely restricts Palestinian civil liberties, civilian casualties on the Israeli side *increased* during that same period.[32] Although military planners claim that they blunted an upwardly moving trend that killed sixty-seven civilians in March 2002, the fact remains that reprisals against Palestinian civilians and militants have not stemmed the tide of Israeli civilian deaths that prompted the reprisals in the first place.

Utilitarian outcomes, particularly the ineffectiveness of reprisals, make it difficult for military planners in Israel to convincingly defend assassinations or restrictive actions against civilians. Ineffectiveness, of course, is not restricted to an evaluation of reprisals and, indeed, should be a factor for assessing any military action. Whether construed as reprisals or legitimate military actions, assassination, closure, curfews, and similar abridgements of civilian civil rights often fail the test of efficacy. Granted, this picture may change, but until there are firm indications that it will, Israeli actions remain unjustifiable. Deontological moral considerations on the other hand, most strikingly those

[30] Ford, "The Morality of Obliteration Bombing," 24, emphasis added.

[31] In the first quarter of 2002, before the operation, there were 40 suicide bombings inside the 1967 borders; in the second quarter, 23, in the third, 17, and in the fourth, 12, and in the first quarter of 2003, 5; see Amos Harel, "Uneasy Quiet on the Western Front, *Ha'aretz*, 24 April 2003; and Amos Harel, "Relative Success Fighting Terror" *Ha'aretz*, 9 February 2003 (Hebrew).

[32] For the twelve-month period (March 2001 through February 2002), 99 civilians were killed by terrorists within the pre-1967 borders (8.25 per month). In March, 2002, 67 civilians were killed, prompting Israeli military action. In the twelve months since March 2002 (April 2002 through March 2003), 159 were killed (13.25 per month). Civilian deaths since 21 June 2002, the date marking the complete reoccupation of the West Bank, total 96 (through March 2003), or 10.7 deaths per month. All figures from B'Tselem, The Israeli Information Center for Human Rights in the Occupied Territories, accessed on the website of B'Tselem at http://www.btselem.org/english/statistics/Casualties.asp, 14 September 2005.

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that protect civilians from grievous harm, repudiate any attempt by Palestinians to respond to Israeli injustices by targeting civilians. No degree of necessity, short of dire necessity, can justify intentionally killing civilians.

In contrast to the DDE, reprisals allow one to deliberately target civilians. Although the DDE cannot countenance using bad means to achieve good ends, reprisals do so explicitly and justify harm to civil rights in response to egregious violations of international law, insofar as reprisals are proportionate and effective. Dire necessity, often referred to as "supreme emergency," is different from both the DDE and reprisals. Like reprisals, supreme emergency allows combatants to violate the DDE and intentionally harm civilians. In contrast to reprisals, however, supreme emergency can excuse intentional killing of civilians in the face of an existential threat. In this way, supreme emergency overrides but does not entirely set aside the moral prohibition against killing civilians. As such, any agent invoking a supreme emergency must provide a vigorous defense of his actions.

Intentionally Killing Noncombatants: The Necessity Defense Writ Large

The argument from supreme emergency is perhaps the last that Palestinians and other insurgent groups may raise in defense of intentionally targeting civilians. It is tied to both asymmetry of arms and an imminent existential threat: lacking recourse to similarly lethal weapons, Palestinians have no option but to terrorize Israeli citizens with the hope of demoralizing the nation and forcing a change in Israeli policy, without which the Palestinian people face certain destruction.

The doctrine of supreme emergency, articulated most famously by Michael Walzer, remains exceptionally controversial and extraordinarily difficult to apply in practice.[33] In many regards, it is an extension of the "necessity defense" common to municipal law and anchored in utilitarianism. Necessity may *exempt* from criminal responsibility a person who violates the law in the face of imminent harm, if the individual acts "in order to avoid consequences which could not otherwise be avoided and which would have inflicted grievous harm or injury [and] provided that he or she did no more harm than was reasonably necessary [nor] disproportionate to the harm avoided."[34] Necessity demands five conditions: the threat of (1) grievous and (2) unavoidable harm and a (3) proportionate, (4) effective, and (5) last-resort response. The term "exempt" is subject to conflicting interpretations. Most legal scholars agree that the necessity defense "excuses" rather than "justifies" one's action so that

[33] Walzer, *Just and Unjust Wars*, 251–268; see also Brian Orend, "Just and Lawful Conduct in War: Reflections on Michael Walzer," *Law and Philosophy* 20 (January 2000): 1–30.

[34] Israel's Penal Law, section 22, cited in Landau Commission (3,11 "Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity," *Israel Law Review* 2, 3 (Spring, Summer 1989): 146–188.

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the law one overrides in the name of necessity retains some measure of force.[35] This force exerts itself in the form of either mitigated punishment or regret and restitution.

Supreme emergency carries this idea to the level of the nation-state or political community facing grievous harm in the form of an existential or genocidal threat that might only be blunted by harming innocents. However, it is important to emphasize that the necessity defense does not have the same legal basis at the international level that it has at the domestic level. International law does not recognize the necessity defense. On the contrary, many international instruments go out of their way to specifically prohibit a nation from violating human rights when facing war or the threat of war. Rather, supreme emergency is a moral argument that belligerents may invoke to convince the international community that their actions are excusable. In the context of the current conflict, the argument from supreme emergency makes three independent claims: First, belligerents may target civilians when their nation faces an existential threat; second, the Palestinians and/or the Israelis face an existential threat; and, third, killing civilians effectively forestalls that threat.

Targeting Innocent Civilians to Forestall Harm

The notion of supreme emergency turns, first and foremost, on the question of whether utility can ever allow one to intentionally kill combatants. Military necessity has always stood juxtaposed to noncombatant immunity, a debate that waged heatedly in the last half of the nineteenth century until decided largely in favor of human rights.[36] As the argument unfolded, the principle of noncombatant immunity assumed either an absolute, inviolable form, which many saw as a necessary bulwark against civilian harm, or a nonabsolutist form that allowed one to override the principle of noncombatant immunity in extreme cases.

Calculating or identifying cases of overriding necessity demands that one first assess simple utility, that is, determine whether an action will bring more good than harm. This requires two calculations that include both the magnitude of the harm one wishes to avoid and the probability that attacking a particular target will effectively forestall the unwanted outcome. If one's goal, for example, is to shorten a war and reduce overall casualties by targeting civilians, one must have an idea as to how many lives will be saved, their relative weights (for combatant and noncombatant lives are not necessarily commensurable), and an indication of the *increased* probability that killing civilians, apart from the other means one takes, will achieve this goal. If not impossible, it remains very difficult to make this calculation and even less likely that the calculation will lend any weight to the

[35] David Cohen, "The Development of the Modern Doctrine of Necessity: A Comparative Critique" in Albin Eser and George C. Fletcher, eds., *Justification and Excuse: Comparative Perspectives*, vol. 2 (Freiburg: Eigenverlag MPI, 1987, 1988), 973–1001.

[36] Best, *Humanity in Warfare*, 174–179.

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utility of intentionally killing noncombatants. If WWII is any example, killing civilians does not significantly raise the chances that war will end any sooner or save a significant number of additional lives.[37]

Beyond this, one has to ask whether utility alone is sufficient justification for egregiously violating noncombatant immunity. Absolutists will deny, of course, that utility can ever justify intentionally killing civilians, but nonabsolutists, too, are wary of utility. Some scholars back off, arguing that the complex calculations just mentioned are impossible to make during wartime.[38] Others suggest that the test is not simple utility but overwhelming utility. Killing civilians must not only tip the scales in favor of marginally increased utility, it must decisively forestall a significantly more harmful outcome. Under these conditions, respect for innocent life may be put aside if a nation is faced with *substantial* harm, that is, genocide or the annihilation of its political community. Assuming that one can distinguish between simple and overwhelming utility, one must also contend with a workable definition of "substantial harm."

The Nature of Substantial Harm

For a nation to invoke the necessity defense, it must face a grievous and unavoidable threat, and target civilians only as a last resort and in a way that is proportionate and effectively meets the threat before it. What constitutes a threat of this magnitude? If confined to an existential threat, then the conditions of supreme emergency are not met unless a nation or ethnic group faces genocide. Yet, genocide constitutes nothing less than a massive war crime that either brings about the collapse of the entire war convention or, at the very least, allows the aggrieved party the right to retaliate in kind. This is certainly what Britain and the United States have in mind as they look askance at Protocol I's prohibition of reprisals against civilian populations. If, on the other hand, supreme emergency is interpreted to include any threat that war poses to a political community, then the prospect of defeat alone is sufficient to allow the threatened party to attack innocent civilians. This cannot be right, for it renders the war convention entirely superfluous. Yet, if one takes seriously the example many commentators use to illustrate supreme emergency, namely Britain's position vis-a-vis Germany in the early part of WWII, then it is hard to escape the impression that the mere prospect of defeat is sufficient to trigger a supreme emergency.

Imagine France prior to its surrender. Would the probability of defeat and occupation have constituted a supreme emergency? If so, it seems that losing sides everywhere might call upon supreme necessity to justify violations of noncombatant immunity. The bombing of Hiroshima is an even less-convincing

[37] See Quester, "The Psychological Effects," 201–235.

[38] C. Curran, *Themes in Fundamental Moral Theology* (Notre Dame, IN: University of Notre Dame Press, 1977) cited in Coates, *The Ethics of War*, 261.

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example of supreme emergency. After abandoning its preference for precision bombing and cooperating with the British in the firebombing of Dresden in February 1945, the United States mounted similar raids of its own against Tokyo and other Japanese cities. Nuclear bombing—considered nothing more than a natural progression of strategic, incendiary bombing—followed in quick succession. The effects of both types of warfare, together with their underlying logic, are nearly identical. Killing tens of thousands in a single raid, military planners could only appeal to military necessity to justify these massive civilian casualties. The argument, however, remains intensely problematic. By 1945, military necessity could not mean supreme emergency, for neither the United States nor its allies faced an existential threat. Interpreting military necessity more narrowly to justify killing enemy civilians to save the lives of American soldiers entirely undermines the principle of noncombatant immunity. Assuming, for a moment, that one can ignore the controversy surrounding the last months of WWII and can suggest that area bombing breaks morale, that the course of events entirely justified Allied goals of unconditional surrender, and that destroying Tokyo, Hiroshima, and Nagasaki were necessary and proportionate means to attain this end, one is still left with the simple argument that any prospect of casualties or defeat justifies intentional harm to noncombatants. The argument may be tempting, but it leaves humanitarian law in tatters. Just as no nation may invoke supreme emergency when it faces any fate less than genocide, no army may appeal to the same principle to stave off defeat or expedite its war.

In the current Middle East conflict, neither party faces an existential threat, but each is subject instead to the relative disadvantages at which warring parties are apt to find themselves. The claim that the Palestinians went to war to wrest additional political concessions from Israel following the collapse of peace talks at Camp David is probably correct.[39] Nevertheless, the Palestinian refusal to accept Israel's offer of less than 100 percent of the West Bank and Gaza, together with the continued occupation that ensued, only serve, at best, as *casus belli*; they do not serve to legitimate attacks on Israeli civilians. Palestinians may claim that terror has brought them closer to political independence,[40] but this is not the test of supreme emergency. One invokes supreme emergency to prevent disaster, not to expedite war. The fact that Palestinians cannot formulate their gains in terms of preventing disaster points readily to the absence of any

[39] Yezid Sayigh, "Arafat and the Anatomy of a Revolt," *Survival* 43 (Autumn 2001): 47–60; Kirsten E. Schulze, "Camp David and the Al-Aqsa Intifada: An Assessment of the State of the Israeli-Palestinian Peace Process, July–December 2000," *Studies in Conflict and Terrorism* 24 (May–June, 2001): 215–233; Rema Hammami and Salim Tamari, "The Second Uprising: End or New Beginning?" *Journal of Palestine Studies* 30 (Winter 2001): 5–25; David Makovsky, "Taba Mischief," *The Public Interest* 151 (Spring 2003): 119–129.

[40] In a 2002 poll, 66 percent of Palestinians believed that armed confrontations have so far helped to achieve Palestinian rights in ways that negotiations could not. Palestinian Center for Policy and Survey Research, Public Opinion Poll # 6, 14–22 November 2002, accessed at http://www.pcpsr.org/survey/polls/2002/p6a.html, 11 February 2003.

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existential threat. Any political arrangement, such as that outlined by Bill Clinton's peace plan, that preserves a measure of national autonomy, let alone a measure of sovereignty and independence, cannot be construed as a threat to the political community. Otherwise, any group denied political independence has grounds to claim supreme emergency and to slaughter its adversary's citizens. The fact that some groups make this claim only indicates that they misunderstand the rights of a political community. These rights cannot always entail national independence on one group's terms alone.

The Israeli case for supreme emergency is similarly confounded when sometimes raised to justify violations of humanitarian law or disregard for civilian life. Talk of supreme emergency surfaces frequently on the Israeli side, inasmuch as many observers describe terror as an existential threat to the Jewish state. But, if the conditions just described are correct, Israel no more faces an existential threat than do the Palestinians. Terror, however heinous, does not jeopardize the political integrity of Israel. As a result, there are no grounds for invoking supreme emergency to justify violating humanitarian law. As long as Israel violates the nonhumanitarian aspects of international law, that is, civil and not human rights, then their actions constitute legitimate reprisal. Embracing terror, the Palestinians do not have recourse to this claim. Once the claim of an existential threat is set aside, there is no place to evaluate the morality of the response. Because no response is warranted, any discussion of the other conditions of necessity—proportionality and last resort—is irrelevant in the context of the current Mideast conflict.

These arguments should also go a long way toward repudiating the claim that asymmetry of arms justifies terrorism as a "last-resort" form of warfare. In response to occupation, and to the counterinsurgency warfare it often entails, groups fighting for national self-determination sometimes suggest that their relative lack of arms coupled with the justice of their cause justifies deviating from the rules of war and humanitarian law. It is odd that the argument has surfaced with such regularity in recent times, when, in fact, material asymmetry is the rule rather than the exception in armed conflict. Were adversaries symmetrically armed, war would rarely begin and nearly never end. Instead, nations often go to war, justifiably or not, when they assume that they have a material edge. They demur when they sense a disadvantage. Nevertheless, a disadvantaged nation forced to defend itself is not released from its international and humanitarian obligations. "In ships we are inferior [and] in money we have a far greater deficiency," warns Archidamus as he counsels his countrymen to avoid war with Athens. Nevertheless, he continues, "if while still unprepared we are induced to lay waste have a care that we do not bring deep disgrace and deep perplexity upon Peloponnese." All this in spite of Athens's "open" aggression.[41]

[41] Thucydides, *The Peloponnesian War*, the Crawley translation, revised and edited with an introduction by T. E. Wick (New York: The Modern Library, 1982), I, 80–82. I admit to a rather liberal interpretation. Archidamus may simply be saying, "If you must go to war, make sure you don't lose."

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Today the lesson resonates stronger still. A material disadvantage does not exempt an adversary from norms of conduct during armed conflict as long as the stronger nation respects humanitarian law and pursues a limited war rather than a total war of annihilation against the weaker nation. Should the stronger nation abuse civilians and pursue a genocidal war, then, and only then, might the weaker nation consider setting aside humanitarian law. There is nothing in the current conflict, however, to suggest that this is the case.

Conclusion: Terror, Counterterror, and Noncombatant Immunity

Arguments justifying terror fall before the principle of noncombatant immunity. But as they do, they redefine the very nature of the debate and bring to the fore a number of important theoretical and practical conclusions. First, they force a close reading of the doctrine of double effect, raising the DDE not so much to justify terror but to condemn counterinsurgency warfare that kills civilians. By prohibiting belligerents from intentionally killing civilians and by measuring intentionality by means of side benefits, the DDE casts a pall over what many think is legitimate collateral damage during battles with insurgents.

Second, a clear understanding of modern reprisals stymies any attempt to argue that terror is a legitimate form of reprisal when an adversary violates the DDE. The argument is not trivial, for enemy civilians have been, for the longest time, acceptable targets of reprisal. If this changed in 1977, it may not be of much concern to Israelis and Palestinians, who neither ratified Protocol I nor entirely removed themselves from the culture of blood feuds, vengeance, and retribution that characterizes the new-old Middle East. Nevertheless, reprisal theory has moved toward honoring the same combatant and noncombatant rights that Palestinians wish to claim for their own. This forbids reprisals against civilian lives. For Israelis, this limits counterinsurgency measures to those that effectively prevent terror, and, although these actions may abridge civil rights, they must preserve human rights. Closure, siege, expulsion, and property destruction sometimes meet these criteria. For Palestinians, their means are necessarily limited to attacks on military targets and civilian property or, should they be inclined to pursue it, nonviolent means of fighting occupation.

Third, the argument of supreme emergency points to the limits of the argument from material asymmetry. Material asymmetry is an ever-present feature of war, whether waged between state actors or between state and substate actors fighting for national self-determination. Yet neither asymmetry nor occupation offers sufficient cause for violating noncombatant immunity. On the contrary, they offer grounds for broadening the protection due combatants and noncombatants under humanitarian law. Protocol I addresses this concern directly, inasmuch as it extends combatant status to irregular, insurgent forces, ensuring that they will not be tortured or killed when captured and, at the same time, widens the range of noncombatant immunities to protect

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civilians from the ravages of a war of national self-determination against an adversary determined to deny them their just rights.

There is nothing in this formulation, however, to protect the citizens and armed forces of an occupying power when insurgents violate humanitarian law. On the contrary, Protocol I deliberately hamstrings occupying forces who may find themselves unable to clearly identify combatants and severely constrains the actions they can take against civilians. This may tempt insurgents to abuse combatant and noncombatant protections and pursue terror. It further forces the occupying power to make a hard choice: either develop novel tactics that may infringe on civil liberties or dispense with humanitarian law altogether. Although it is unlikely that any Western nation will argue that terrorism justifies a reciprocal breach of international law, nations fighting insurgents that embrace terror should be free to make the weaker claim that self-defense allows certain measures that infringe upon civil rights or jeopardize civilian property.

Occupation and terror test the limits of humanitarian law and, in particular, the principle of noncombatant immunity. Each side often sees itself as significantly disadvantaged. Palestinians complain of their inability to respond to modern military technology in kind and Israelis of their inability to respond to terror in kind. Yet, in the context of modern warfare and humanitarian law, there is no doubt that Israel enjoys a clear advantage. Terror and reprisals against civilian lives have no place in the international order, whereas collateral damage and reprisals against civilian civil rights do. There is, it appears, a moral as well as material asymmetry relative to the means each side employs in the current conflict.

It is ironic that an occupying power should find itself in such a position, successfully pleading self-defense and military necessity against a far weaker adversary. Two points are, however, in order. First, Israel's advantages are limited, even as it fights terror. Neither the DDE nor reprisal theory can justify all aspects of current Israeli policy. The discussions above have shown this much. Second, the moral asymmetry currently in Israel's favor will reverse once terror is abandoned. Once the Palestinians or any other insurgent group renounces terror and restores the principle of noncombatant immunity, they may find it possible to reenter the community of nations and successfully press their claims for national self-determination.

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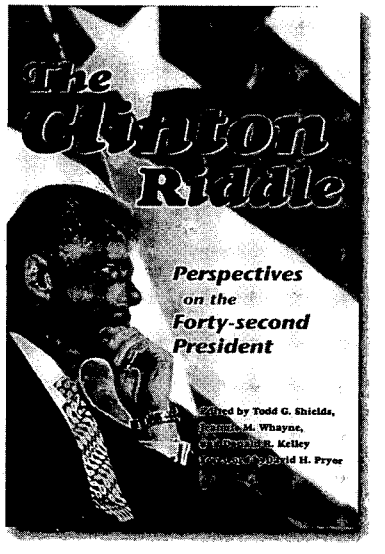

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Congressional Oversight: Vice President Richard B. Cheney's Executive Branch Triumph

BRUCE P. MONTGOMERY

On 22 February 2002, the General Accounting Office (GAO), the investigative arm of Congress, filed an unprecedented lawsuit in U.S. District Court in Washington over access to records from Vice President Richard B. Cheney's task force on energy policy. The case, named *Walker v. Cheney*, raised compelling statutory and constitutional questions relating to the authority of the GAO's Comptroller General, and by extension Congress, to require the Vice President to provide information concerning the President's decision making on national energy policy. Each side based its arguments on fundamental constitutional concepts invoking competing theories of the proper balance of power between the legislative and executive branches, and insisted the other side was seeking to cause a revolution in separation-of-powers principles. But behind the façade of such principled constitutional arguments was a political power struggle between two sides, each of which sought to use the case as a means to expand its own institutional prerogatives at the expense of the other.

David M. Walker was perhaps well positioned to carry out this political struggle with the Vice President. As required by law, Walker's 1998 selection as Comptroller General was made after the ten leaders of the House and Senate submitted his name, along with a list of other candidates, to the President for consideration. From this list of candidates, the President was mandated to select a nominee—in this case Walker—who was then appointed with the consent of the Senate. With statutory powers to investigate executive actions and a fifteen-year appointment, the longest term of any position in the

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executive branch, the Comptroller General had considerable latitude and independence to wage a campaign of disclosure against a Vice President who refused to release information about the formulation of the administration's national energy policy.

From February to May 2001, Vice President Cheney headed up an energy task force, convening a series of meetings with as many as 400 people, mostly from the energy industry, to devise a new energy policy for the nation. At the request of ranking House Democrats, the GAO asked for information concerning whom the task force had met with. The Vice President refused to release the information, citing executive confidentiality. There was little doubt the records would show that the administration had met predominately with energy industry executives who had had a hand in significantly shaping the administration's energy policy. But the records seemed beside the point. The Bush administration seized upon the GAO's request, which comported with the agency's numerous past investigations of executive branch activities, for a much larger purpose—to reestablish executive prerogatives and confidentiality that was perceived to have eroded since the Nixon administration. The case appeared indicative of the Bush administration's larger agenda upon coming into office of establishing a strong executive-centered government and rolling back decades of legislative encroachment on the prerogatives of the presidency. At the same time, the GAO was eager to establish legal precedent to clarify and expand its own investigative powers and oversight of the executive branch.

This particular dispute between the two branches is notable for being wholly unnecessary, perhaps even reckless. Indeed, as the two branches squared off in the political and judicial arena, several individual agencies that had participated in Cheney's energy task force were compelled by lawsuits filed by public interest groups to release much of the nondeliberative information that the GAO was seeking and the White House was refusing to relinquish to Congress. Nonetheless, the chairman of the energy task force—the Vice President—and his immediate staff refused to disclose the documents in their possession. Although the release of the documents by the individual agencies should have helped to diffuse the dispute, the White House and the GAO nevertheless continued their constitutional struggle over the balance of powers. Both sides pursued the case in court, resulting in a significant institutional blow to the GAO's and Congress's powers to investigate the executive branch. If the GAO was seeking clarification and expansion of its previously ambiguous powers to investigate the executive, which had often encouraged negotiated settlements when disputes arose, it received an unanticipated hit that has seemingly produced far-reaching consequences regarding what information the GAO can demand on behalf of Congress and how it may obtain this information. Nevertheless, the case was ultimately decided not in the courts, but in the political arena, after the Republican Party won majorities in both houses of Congress in the 2002 elections. In retrospect, it appears that the GAO's losing

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battle was never worth the risk, and that the Vice President had lured the agency into a legal and constitutional fight as a means of eroding legislative oversight. Indeed, the case marks one of the Bush administration's most significant victories, not only in reasserting the prerogatives of the presidency, but also in building a new wall of secrecy around the executive branch.

In the aftermath of the GAO's political and court defeats, the public interest groups continued their case against Vice President Cheney for the remaining information that had been sought by the Comptroller General. After losing two rounds in the lower courts, the Vice President appealed the case to the U.S. Supreme Court on the grounds that any court-ordered disclosure would violate the separation of powers between the judicial and executive branches. As a result, the Supreme Court issued an opinion that was sympathetic to the Bush-Cheney administration's constitutional arguments but returned the case back to the U.S. Court of Appeals for reconsideration.

Cheney's Energy Task Force

Even before the Bush administration publicly unveiled its national energy plan on 17 May 2001, many observers anticipated that it would escalate the biggest debate in a generation over where America's energy supplies should come from and at what environmental cost. The plan was expected to ignite major and long-lasting battles over tapping Alaskan oil and Rocky Mountain coal and natural gas, and reviving nuclear power. For consumers and businesses, the immediate issues were whether the Bush administration's free-market philosophy could create proposals to help spur badly needed expansion in the strained energy infrastructure of refineries, pipelines, storage systems, and transmission lines. For environmental groups, the answers rested with stepped-up conservation, renewable resources, and major investment in the development of alternative energy sources. The imperative of a national energy policy carried particular urgency after the 2000 California energy crisis, with its shortages, rolling brownouts, and enormous price spikes that warned of bigger problems to come.

As chairman of the energy task force—known as the National Energy Policy Development Group (NEPDG)—Cheney was the driving force behind nearly every aspect of the final report. The handling of the energy task force reflected Cheney's proclivity for executive confidentiality and his close ties to business, particularly because the deliberations were conducted largely in secret, with a high regard for industry. Ironically, Cheney's handling of the process behind closed doors attracted a blast of unwanted scrutiny, as critics seized on his finances and ties to the oil industry in an effort to discredit the policy. Democrats and environmental groups charged that his judgment of energy issues was suspect because of his chairmanship until August 2000 of the Haliburton Company, a Dallas-based energy services firm that was expected to benefit from the administration's new energy policy. Philip E. Clapp, president

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of the National Energy Trust, criticized Cheney for "seeing the [energy] problem entirely from the side of the energy producing industry that made him a millionaire, not from [the viewpoint of] a consumer struggling to make ends meet." But a close aide to Cheney called the criticism an "outrage" and said that Cheney's expertise in the industry was crucial to "trying to solve a problem of this magnitude."[1]

Although the plan made extensive recommendations for the use of technology to conserve energy and produce power more cleanly, the core of the report concluded that the nation needed hundreds more power plants, natural gas pipelines, oil wells, and nuclear power reactors.[2] Cheney's task force included the secretaries of energy, interior, treasury, commerce, and transportation, and the head of the Environmental Protection Agency (EPA).[3] News reports of the task force's stealthy energy deliberations attracted the attention of Henry A. Waxman of California and John D. Dingell of Michigan, ranking Democrats on the House Energy and Commerce Committee and Government Reform Committee. On 19 April, Waxman and Dingell asked the GAO to investigate the conduct and composition of the energy task force, including, at minimum, who served on the task force, whom the task force met with, what information they provided, the location and date of each meeting, and the costs involved.[4] The GAO thus informed the Vice President's office that it was looking into the costs and practices of the NEPDG, which Cheney directed and which oversaw development of the energy policy. Both Waxman and Dingell asked for the inquiry to determine whether task force members or staffers had met privately with major campaign contributors. But Cheney's counsel, David S. Addington, dismissed the request, arguing that there was no legal requirement to provide the information and that it appeared that the GAO intended to intrude into the heart of executive deliberations. Addington attached a seven-page letter to his response from the task force's executive director, Andrew Lundquist, indicating that the NEPDG had

[1] See Mike Allen and Dana Milbank, "Cheney Role Offers Strengths and Liabilities," *Washington Post*, 17 May 2001.

[2] See National Energy Policy, Report of The National Energy Policy Development Group, May 2001, accessed at http://bookstore.gpo.gov, 4 June 2004.

[3] The task force also included the Director of the Federal Emergency Management Agency, the Assistant to the President and Deputy Chief of Staff for Policy, the Assistant to the President for Economic Policy, and the Assistant to the President for Intergovernmental Affairs.

[4] Waxman and Dingell requested that the GAO's investigation specifically seek the following: 1) a complete list of all NEPDG members and staff, and an identification of any members or staff who were not full-time employees of the federal government; 2) a complete list of all NEPDG meetings, including the date, location, and attendees of each meeting; 3) the criteria used to determine which nonfederal entities would be invited to the meetings and an identification of the person or persons responsible for extending invitations under those criteria; 4) an accounting of the legal authorities pursuant to which the NEPDG was organized and was conducting its business; and 5) an accounting of all direct and indirect costs associated with the task force. See *Walker v. Cheney*, Complaint for Declaratory and Injunctive Relief, U.S. District Court for the District of Columbia, Civil Action No. 1: 02cv00340, 8.

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received temporary support from five Energy Department employees and from a White House fellow. Lundquist stated that the meetings "were simply forums to collect individual views rather than to bring a collective judgment to bear." Although White House officials refused to disclose the list of meetings or attendees, they provided a numerical count as to how many energy industry or corporate groups, unions, environmental groups, and others the task force had met with.[5] Environmentalists nevertheless complained that the process was skewed because the Vice President had personally met with industry leaders, while dispatching aides to speak to the environmentalists, many of whom were grouped into one meeting. Further, although the White House publicized meetings with labor representatives, it kept sessions with industry executives and lobbyists private. Nonetheless, Cheney disputed accusations that his private meetings with industry officials who had given money to the Republican Party had compromised the work of the task force. "Just because somebody makes a campaign contribution doesn't mean that they should be denied the opportunity to express their view to government officials," he said.[6]

On 1 June 2001, however, the GAO wrote a second letter to Addington asking for information about individuals involved in the energy task force group and the "nature, purpose and attendees in connection with the meetings."[7] The letter thanked Addington for the information Cheney's office had already provided, but said that the GAO needed "additional information and dialogue to complete our review of the energy policy development process."[8] It also noted that the GAO's Comptroller General had determined that the inquiry was "appropriate." Addington replied on 7 June that he found Walker's decision "disappointing" and said that the GAO had no legal basis for pursuing an inquiry of this scope. Cheney's counsel wrote that a request from two House members did not constitute a proper request under the statute cited by the GAO because a "committee of Congress acts by majority vote or action of the committee chairman." Nevertheless, Addington said he would try to provide the requested information about the direct and indirect costs of the group "as a matter of comity between the legislative and executive branches." On 21 June, Addington sent the GAO seventy-seven pages of miscellaneous documents purportedly concerning direct and indirect energy task force expenditures incurred by the Vice President's office. But the documents were virtually useless, largely consisting of cost figures with no corresponding explanation as to what the funds were for. In response to Addington's rebuff to the GAO, Waxman stated that "the Cheney task force's refusal to provide

[5] Although White House officials refused to disclose specifically who the energy task force met with, aides said the representatives at the meetings included 118 energy industry or corporate groups, 40 renewable energy providers, 22 unions, 13 environmental groups, 5 academics, 63 governmental groups, 6 energy efficiency proponents, and a consumer group. See Allen and Milbank, "Cheney Role."

[6] Ibid.

[7] *Walker v. Cheney*, Complaint for Declaratory and Injunctive Relief, 11.

[8] Mike Allen, "Cheney Spurns GAO Request," *Washington Post*, 19 June 2001.

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basic information about its interactions with nongovernmental entities and individuals raises serious questions about the access large donors have to the policy making process in the Bush administration."[9]

There appeared to be some reason for Waxman and Dingell's concern. Nine days before George W. Bush was inaugurated, energy lobbyists had met at the American Petroleum Institute (API) in Washington. Knowing they would have the ear of the White House, they drew up a wish list—looser rules for drilling on federal lands, more drilling for oil and gas in Alaska and the Gulf of Mexico, and lower royalty payments for tapping offshore wells, among other suggestions. These and many other recommendations made it into Bush's energy plan. In addition, some of the key leaders at the API meeting had since been appointed to high-level positions in the new Bush administration—among them J. Steven Griles, an energy lobbyist who became second in command at the Interior Department, and Thomas Sansonetti, an energy lawyer who was named the Justice Department's top environmental attorney. The appointments of Griles and Sansonetti ensured that they would assist in overseeing the policies they helped to write. *Newsweek* observed that not "since the rise of the railroads more than a century ago ha[d] a single industry placed so many foot soldiers at the top of a new administration." At the same time, it was evident that industry leaders, who had donated more than $22.5 million to GOP coffers, enjoyed constant access to the energy task force, whereas the environmental community received one mass meeting and was rebuffed in its efforts to meet with Cheney, a dynamic that only fueled suspicions among environmentalists and their Democratic supporters in Congress about what was happening behind closed doors. Indeed, the impression among environmental groups was that the nation's energy policy was being hijacked by industry insiders in secret meetings and that they were being shut out of the process altogether.[10]

Nonetheless, few expected that David Walker would become one of the Bush administration's leading antagonists. Before becoming the director of the GAO, Walker had been invited by George H. W. Bush to volunteer in his 1980 campaign for president, was a delegate to the Republican National Convention, worked in Ronald Reagan's Labor Department, and won his job at the GAO with the support of Senate GOP leader Trent Lott. Despite his impeccable Republican credentials, in 1998, President Bill Clinton appointed Walker to a fifteen-year term as the GAO's Comptroller General. When Clinton nominated him, Walker switched from Republican to Independent and saw himself as beholden to neither party. Now, as the Comptroller General, Walker began leading a high-profile, high-stakes battle to force

[9] Ibid.

[10] See Mark Hosenball, T. Trent Gegax, and Rich Thomas, "Lobbyists at the White House Table," *Newsweek*, 14 May 2001, 19–22; and Martha Brant and Tamara Lipper, "A New Capitol Clash," *Newsweek*, 11 February 2002, 28–29.

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Cheney to release records detailing administration deliberations on energy policy. Confronted by Cheney's intransigence, in August 2001, Walker threatened to sue the administration in federal court. "This is not a situation where the vice president is resisting the congressmen," Walker stated. "He's now resisting the GAO. And his attorneys are engaged in a broad-based, frontal assault on our statutory authority. We cannot let that stand." Bombast aside, with such words, Walker began setting the stage for a public showdown between the executive and legislative branches. In Walker's view, his quest had gone far beyond where it had begun the previous spring when Waxman and Dingell demanded that Cheney release the information. The issue now had been wholly transformed into a defense of the GAO's very reason for being. Walker further considered the battle not to be "about ideology or party, but about openness and the Constitution." Walker said he had done everything he could to avoid a confrontation. To reach an accommodation, GAO lawyers spoke with White House attorneys, and Walker himself called the Vice President on 30 July in a futile effort to find a solution to the impasse.[11] Walker gave little credence to the White House's arguments that meeting the GAO's demands would violate the confidentiality of executive deliberations.[12]

By the mere threat of a lawsuit against the White House, Walker had already elevated the confrontation to unprecedented levels. The GAO had not challenged the executive so directly since its creation by Congress in 1921. Although Walker insisted he was not looking for a showdown with Cheney, he nevertheless seemed to see the confrontation as a chance to expand the GAO's investigative powers and oversight of the executive branch. On 18 July, Walker pressed for disclosure of the documents by issuing a demand letter to Cheney as chairman of the energy task group. The letter again requested any information concerning the date and location of the meetings, the persons present, the purpose and agenda, meeting minutes or notes, how the Vice President and others determined who would be participants, and the associated costs. Anticipating a statutory and constitutional showdown, on 2 August, Cheney sent letters to both houses of Congress discussing the task force records dispute. The Vice President's letter asserted that the GAO was exceeding its lawful authority and sought to unconstitutionally interfere with the executive branch. Shortly afterward, on 17 August, the GAO exercised its statutory powers by issuing a formal report to the President, the Vice President, the leaders of the House and Senate, the director of the Office of Management and Budget, and the Attorney General, informing them of the

[11] Letter from David M. Walker, Comptroller General of the General Accounting Office, to the Vice President of the United States, 17 August 2001, accessed on the website of the U.S. House of Representatives—Minority Office at http://www.house.gov/reform/min/inves_energy/energy_Cheney.htm, 11 August 2003.

[12] Ellen Nakashima, "Can GAO Make Cheney Blink?" *Washington Post*, 3 August 2001.

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dispute over the energy task force records and demanding the release of the documents according to law. In the report, the agency claimed that it "ha[d] ample authority to conduct this review," and said that it might go to court to get the documents if they were not provided within twenty days according to the 1980 law that gave the GAO authority to initiate judicial action in support of its requests. The agency noted that as a matter of comity, it offered to "scale back" its request for deliberative information, including meeting minutes and notes and information presented by nongovernment participants, even though it was legally entitled to the documents. Nevertheless, the GAO continued to insist on information detailing who attended the energy task force's meetings, who was hired, who was consulted, and what the policy cost.[13]

Under the 1980 GAO statute, the administration could have quickly ended Walker's crusade by officially declaring that any disclosure would substantially impair government operations.[14] But the White House saw opportunity in a possible legal case and had a much larger purpose in mind. According to an article in the *Washington Post*, congressional sources viewed the White House's adamant stance to be a reflection of its desire to reclaim the powers of executive privilege that had been squandered with the various investigations under the Clinton administration, including those dealing with the Monica S. Lewinsky matter and the case of former Secretary of Agriculture, Mike Espy.[15] The administration's intent, however, was considerably more ambitious. Not only did the White House seek to use the case to help restore the powers of the presidency that had been eroded under the Clinton administration, but more important, to roll back Congress's relentless thirty-year encroachment on the executive branch since the Nixon era. Thus, at least initially, each side appeared to see opportunity in escalating the confrontation, with the aim of expanding its own powers at the expense of the other under the guise of principle.

In early September 2001, Walker said he would decide by the end of the month whether to sue the executive branch, which would be a first in the agency's eighty-year history. Nevertheless, with the September 11 terrorist attacks on New York and Washington, Walker decided to delay his decision. As Walker was deliberating on whether to sue the White House, the Natural Resources Defense Council (NRDC) filed suit on 11 December 2001 in federal

[13] Ibid.; see also letter from Walker to the Vice President, 17 August 2001.

[14] In 1980, Congress vested the comptroller general with the authority to enforce the GAO's investigative powers by bringing civil action in the U.S. District Court for the District of Columbia. The law, however, precludes filing suit in three situations: 1) when records at issue relate to activities that have been designated by the president as foreign intelligence or counterintelligence activities; 2) when a specific statute exempts the records from disclosure; and 3) when, within twenty days of filing of the comptroller general's report, the president or the director of the OMB certifies to the comptroller general and Congress that a record could be withheld under section 552(b) or (7) of title 5 and disclosure could be reasonably expected to impair substantially the operations of the government.

[15] Ellen Nakashima, "Cheney Defies GAO's Disclosure Demand, *Washington Post*, 7 September 2001.

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court to force the Department of Energy to produce documents concerning the development of the Bush administration's energy policy. The group had initially requested the information months earlier, in April, under the Freedom of Information Act (FOIA), but the administration had denied the request on the grounds that the Cheney task force was not a federal agency and therefore not subject to the FOIA. Nevertheless, because the task force included the heads of various federal agencies directly subject to FOIA, the NRDC decided to sue the Department of Energy, which held the most documents. The environmental group also sued the Department of Energy because it was not permitted under law to sue the White House.

The left-leaning environmental group joined the conservative watchdog organization, Judicial Watch, in an effort to gain access to information that both groups believed should be made public. Judicial Watch filed its own suit in May against the Department of Energy and other agencies, and, in July, against the NEPDG, led by Cheney, demanding that the administration release records on who met with the task force and when. Both groups decided to lay siege to the administration at a time when the GAO had opted to delay its own legal challenge for the records. Moreover, because energy legislation was pending in the House, the groups sought to determine who had had a role in shaping it. According to the organizations, the administration's effort to withhold the records was part of a larger pattern of secrecy and an abuse of executive power. One of the NRDC's attorneys, Sharon Buccino, stated that the "public has a right to know who's trying to buy government policy. We've waited long enough. So we're going to court to get it."[16]

The GAO's confrontation with the administration assumed new prominence with the collapse and the numerous investigations of the energy trading company, Enron Corporation, which had ties to the Bush White House. Enron's huge trading losses, stemming from massive corporate fraud, led it to file for bankruptcy on 2 December 2001. Representative Henry Waxman, the administration's chief antagonist over the energy policy task force records, wasted little time in demanding information from the White House about its ties to the disgraced energy firm. On 8 January 2002, he publicly released his correspondence with Addington, the Vice President's counsel, which contained the information that either Cheney or his aides had met six times with Enron representatives in 2001, including a session two months before the energy company had declared the largest corporate bankruptcy in American history. The meetings continued after the White House had released the energy policy that Cheney's task force had developed. Five of the meetings were with Cheney aides; the other occurred between the Vice President and Kenneth L. Lay, Enron's chairman. Addington wrote, however, that Cheney and Lay "discussed energy policy matters, including the energy crisis in

[16] Ellen Nakashima, "Environmental Group Sues for Records of Energy Task Force," *Washington Post*, 12 December 2001.

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California, and did not discuss information concerning the financial position of the Enron Corporation."[17] The administration's confession of its meetings with Enron officials signaled a tactical retreat as pressure mounted to fully disclose its ties to the energy firm. By releasing Addington's letter to the press, Waxman sought not only to reveal the Houston-based company's longtime personal and financial ties to Bush, but also to indicate the corrupt firm's undue influence over the administration's new energy policy. Waxman said the letter "show[ed] that the access provided to Enron far exceeded the access provided by the White House to other parties interested in energy policy."[18]

Waxman's accusation received added, if unexpected, support when *Newsweek* disclosed that the White House had not been fully forthcoming about its contacts with Enron. The news magazine reported that on 29 March 2001, Cheney's top energy assistant, Andrew Lundquist, had met with members of the Clean Power Group, a coalition funded by five power companies, including Enron. The coalition sought the replacement of environmental regulations with a plan that would enable industries to trade pollution credits among themselves. If adopted, the plan stood to earn Enron hundreds of millions of dollars. The meeting was arranged by Brad Card, the coalition's lobbyist and brother of the White House chief of staff, Andrew Card. When questioned about this omission, a White House aide responded that Lundquist had no recollection that Enron was part of the group—a statement that directly contradicted a Brad Card associate, who said he had made it clear to Lundquist that Enron was a coalition member. Cheney spokeswoman Mary Matalin said that it did not matter, inasmuch as the proposal never made it into the energy plan. "Who cares if there were a hundred meetings?" she said. Despite Matalin's flippant dismissal of the matter, the Justice Department intervened with an order for the administration to preserve any documents related to Enron.[19]

The growing publicity surrounding the administration's contacts with Enron, together with Cheney's meeting with Lay, elevated demands by the GAO for documents on the workings of the energy task force. But press secretary Ari Fleischer said that releasing the documents to the GAO would undermine executive privilege and the candor of people who meet with administration officials. He further dismissed a congressional report stating that seventeen provisions in the administration's energy policy appeared to benefit Enron as a "partisan waste of taxpayer money." To Waxman and other Democrats, however, the administration's decision to withhold documents smacked of a cover-up.[20]

[17] Mike Allen, "Cheney, Aides Met With Enron 6 Times in 2001," *Washington Post*, 9 January 2002.

[18] Ibid.

[19] Brant and Lipper, "A New Capitol Clash," 29.

[20] Elisabeth Bumiller, "Congress Rebuffed on Energy Documents," *New York Times*, 18 January 2002.

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On 22 January 2002, in light of Congress's upcoming consideration of establishing a national energy policy, four Senate Democratic chairmen of powerful committees urged the GAO to continue its investigation of the NEPDG to determine who helped shape the administration's energy plan.[21] As a result, Walker again demanded that the White House turn over the documents, this time issuing an ultimatum that "unless we get the information or we're in the middle of intense negotiations, I'm not going to sit on this much longer."[22] Walker's ultimatum further escalated a battle with the White House at a time when the administration faced questions from various directions about its ties to Enron. Democratic lawmakers sought to know whether Enron had undue influence in the administration because of campaign donations, a criticism the White House rejected. Nonetheless, the Enron connection loomed ever more ominously for the Bush administration. At the same time that Walker issued his ultimatum to the White House for the documents of the energy task force, former Enron executives publicly disclosed that a top Bush campaign advisor, Edward Gillepsie, had served as the company's key conduit to the administration. Enron had paid Gillepsie $525,000 in 2001 for lobbying that included the energy task force and economic stimulus legislation with tax provisions that would have benefited the corporation. In addition, Judicial Watch announced that it was filing a complaint with the Federal Election Commission to determine whether Karl Rove, Bush's top campaign advisor, had arranged for an Enron consulting contract for strategist Ralph Reed, instead of paying him from campaign funds. The White House and Reed denied the allegation, made by an anonymous source in the *New York Times*, that Reed's contract had been arranged to secure his allegiance to Bush during the early days of the Texas governor's presidential bid.[23]

As part of his continuing campaign for the administration's energy task force documents, Waxman released additional papers indicating that the White House had altered its final report to benefit Enron by calling for a boost in energy production in India. Waxman's aides said that Enron officials had met with the energy task force before the administration issued its final report. The

[21] Senator Carl M. Levin of the Senate Committee on Armed Services and the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs; Senator Joseph I. Lieberman, chairman of the Senate Committee on Governmental Affairs; Senator Ernest F. Hollings, chairman of the Senate Committee on Commerce; and Senator Byron L. Dorgan, chairman of the Subcommittee on Treasury and General Government of the Senate Committee on Appropriations, and the Subcommittee on Consumer Affairs, Foreign Commerce, and Tourism of the Senate Committee on Commerce, Science, and Transportation, joined the previous congressional request that the GAO investigate the composition and practices of the NEPDG. See letter from Hon. Carl M. Levin, Hon. Joseph I. Lieberman, Hon. Ernest F. Hollings, and Hon. Byron L. Dorgan to Hon. David M. Walker, 22 January 2002.

[22] Dana Milbank and Dan Morgan, "GAO Vows to Sue for Cheney Files: Hill Probes Enron Influence on Task Force," *Washington Post*, 26 January 2002.

[23] Ibid.

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change had been made at about the time that the White House was trying to aid Enron in India. The company was in a dispute with the Indian government over its Dboal project, a gas-fueled power plant. As efforts to resolve the dispute foundered, Enron sought $2.3 billion from India for its interest in the plant. Cheney twice met with Indian officials, and Bush was scheduled to discuss the matter under a campaign coordinated by the National Security Council. The administration's final energy policy called for the "secretaries of state and energy to work with India's Ministry of Petroleum and Natural Gas to help maximize its domestic oil and gas production." Although the energy task force's 30 March 2001 draft report made no mention of this provision, it appeared in the final report, after Cheney met with Enron chairman Kenneth Lay on 17 April 2001.[24]

Despite these revelations of close ties with the giant energy firm, the White House remained fixed in refusing to give up the energy task force records. The continuing standoff was shaping up as the highest profile court fight between Congress and the White House since Watergate. Cheney rejected the demand for information in broad constitutional terms, professing a desire to restore presidential power to a level not seen since the Nixon administration. "I have repeatedly seen an erosion of the powers and the ability of the president of the United States to do his job," he said. The Vice President said it was "wrong" for past administrations to have bowed to congressional demands. "We are weaker today as an institution because of the unwise compromises that have been made over the last 30 to 35 years," Cheney said to ABC News.[25] Cheney attributed the threatened lawsuit to efforts to tar the administration with the Enron scandal by Democrats, particularly Representative Henry Waxman. Nonetheless, on *FOX News Sunday*, the Vice President said that what was "really at stake here is the ability of the president and the vice president to solicit advice from anybody they want in confidence . . . without having to make it available to a member of Congress."[26]

The administration's willingness to fight a high-profile legal battle with Congress surprised even some legal experts sympathetic to preserving executive power. Bruce Fein, a lawyer who had served in the Nixon and Reagan Justice Departments, believed that there was a "possibility" the administration could win a case against the GAO, but said that it would be a "pyrrhic victory." He believed that a court victory would only prompt congressional committees to issue subpoenas for the information, and that the damage inflicted on the administration's public image and integrity would be irreparable. It would give the appearance of a cover-up, similar to the last such legal battle, when, in 1974, President Richard M. Nixon won a case against a Senate committee that was

[24] Ibid.

[25] Dana Milbank, "Cheney Refuses Records Release: Energy Showdown with GAO Looms," *Washington Post*, 28 January 2002.

[26] Ibid.

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seeking information related to campaign contributions and executive actions.[27] Indeed, the Bush administration was already facing a growing public relations problem on the Enron situation. According to a CBS-New York Times poll taken in January 2002, 67 percent of Americans surveyed believed that the administration was either hiding something or lying about its relationship with Enron. Pressing the offense, Senate Democratic Majority Leader Thomas A. Daschle said on CBS's *Face the Nation* that the GAO was on "solid ground in demanding these records be turned over. The American people have a right to know what the facts are." But Cheney said that the issue of Enron was not about the administration. "What it's really about is whether or not laws were broken or laws need to be changed with respect to the functioning of a major corporation."[28] As the confrontation between the GAO and the Vice President intensified, some Republicans threatened to block any lawsuit by Congress's investigative arm. Senator Orin Hatch of Utah, the senior Republican on the Senate Judiciary Committee, said that the GAO should not be "trying to impose disclosure on internal White House meetings to determine policy." House Majority Leader Dick Armey of Texas said that he and Speaker Dennis Hastert of Illinois planned on speaking to the agency. Senator Arlen Spector of Pennsylvania commented that he would be investigating to see whether the GAO would be overstepping its authority by suing the administration. "My concerns are that it would encroach upon the deliberative process and make it impossible for the vice president at the direction of the president to make a recommendation," Spector said.[29]

Cheney's refusal to release the documents on the grounds that it would set a dangerous precedent in making it impossible for future presidents to receive "unvarnished" advice represented the administration's most dramatic attempt after two years in office to resurrect a greater wall of privacy around the executive branch. The effort followed the White House's attempts to delay the release of the Reagan presidential papers, its refusal to disclose Justice Department records to Congress, and a general intolerance of leaks to the press.[30] But critics and independent analysts disputed Cheney's position on the documents, noting that although the administration had a right to withhold information dealing with national security, any meetings with private industry or lobbyists for the purpose of developing national policy should be disclosed. The prospect of a White House victory in the case worried some observers, because it probably would have strengthened the hand of the executive branch in determining what should be kept secret. "What's bizarre is not just that the

[27] Ibid.

[28] Ibid.

[29] "Investigators to Sue White House for Access to Energy Task Force List," *The Associated Press*, 30 January 2002.

[30] Liz Mariantes, "Lawsuit Will Test Right to Privacy in the White House," *Christian Science Monitor*, 31 January 2002.

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executive branch has staked out a fairly extreme separation-of-powers point of view, but they seem to be looking for a fight to pick," said Peter Shane, a professor of law and public policy at Carnegie Mellon University. "Unless they're covering something up, this is an odd thing to go to the mat over."[31]

In many ways, the facts of Cheney's refusal to disclose information about the energy task force were strikingly similar to those of the controversy surrounding Hillary Rodham Clinton's health care task force, which was created in 1993 to develop a proposal for reforming the U.S. health care system. When Hillary Clinton refused to turn over documents about the task force's secret meetings, conservatives and Republicans raised a storm of public criticism,[32] demanding to know who participated in the meetings, how often the meetings occurred, and how decisions were being made. One of the groups opposing the Clinton task force—the Association of American Physicians and Surgeons—filed suit for access to information about the health care task force under the open meetings statute. Faced with stiffening opposition, Mrs. Clinton eventually backed down, but it was in part because of such retreats by the executive branch that Cheney claimed he was taking such an unyielding stand. Cheney made little secret that he aimed to reverse an erosion of executive branch authority that had occurred over decades, with Congress increasingly emboldened to demand information from presidents who acquiesced under political pressure. Although the U.S. Supreme Court has ruled in the past that the executive branch has the right to withhold certain types of documents, it also has held that such a privilege must be balanced with Congress's right to know. As a result, the Court compelled former President Nixon to turn over his White House tapes during the Watergate scandal, because the material was relevant to a criminal investigation. Indeed, in most past legal battles involving an administration's effort to withhold information, the courts have favored the party seeking disclosure. "In our democratic system, the balance generally favors openness of information," said Mark Rozell, a professor of politics at Catholic University. The relevant law in this case was the Federal Advisory Committee Act, which requires all policy meetings with outside advisors to be open and to avoid the appearance of deals being made with lobbyists behind closed doors. Nonetheless, Cheney remained wedded to the purpose of reversing Congress's erosion of the prerogatives of the presidency. According to Larry Klayman, head of Judicial Watch, Cheney's position represented "an old-world view of government, that people should not ask questions."[33]

The GAO had already tried to accommodate the White House by scaling back its demands for the minutes of energy task force meetings, stating that it only wanted information related to the identities of the people in the meetings

[31] Ibid.

[32] See *Association of American Physicians and Surgeons, Inc. v. Hillary Rodham Clinton*, 813 F. Supp. 82, 95 (D.D.C 1993).

[33] Mariantes, "Lawsuit Will Test Right to Privacy."

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and the date, subject, location, and cost of each meeting. Nonetheless, this move made little headway with a White House that made it exceedingly clear that the administration was ready to mount a high-level and protracted legal fight. On 21 February, the eve of the filing of the GAO lawsuit, the White House disclosed that it would be represented in its battle against the GAO by Solicitor General Theodore B. Olson, the government's top litigator, and by Robert D. McCallum, Jr., the assistant attorney general in charge of the Justice Department's Civil Division. A senior White House official told the *Washington Post* that the top lawyers were selected to remove "any question about how seriously we take this principle" of protecting the confidentiality of executive deliberations and advice.[34] The White House threatened that if it failed to win the case, it would seek to have the statute empowering the GAO declared unconstitutional—an action that, if successful, would considerably curtail the legislative branch's oversight of the executive branch. The White House's willingness to escalate a battle of interpretations of a congressional statute into a constitutional test of the power of the presidency indicated that it was willing to sustain a legal battle that could take months, if not years, to resolve. Nevertheless, by assuming this uncompromising stance, the administration was taking a political risk by keeping its ties to Enron, the largest political benefactor of Bush, in the news.

GAO Files Suit

On 22 February, the GAO filed its suit against the Bush administration, an unprecedented legal action growing out of a ten-month standoff between the executive and legislative branches of government.[35] The lawsuit, filed in U.S. District Court in Washington, was named *Walker v. Cheney*. In a written statement, the GAO said, "We take this step reluctantly. Nevertheless, given [the] GAO's responsibility to Congress and the American people, we have no other choice."[36] Officials involved in the dispute predicted the lawsuit would end up in the Supreme Court if the two sides were unable to reach a compromise. At issue was the law giving the U.S. Comptroller General the power to investigate all matters related to the receipt, disbursement, and use of public money. The White House maintained that the GAO was limited to investigating the cost of government activities, but the GAO took a broader

[34] Dana Milbank, "White House Girds for Protracted Legal Fight," *Washington Post*, 22 February 2002.

[35] On 30 January 2002, Comptroller General David Walker notified the president pro tempore of the U.S. Senate and the speaker of the House of Representatives that the GAO was preparing to file suit for the records in dispute. The Comptroller General filed suit seeking declaratory and injunctive relief on 22 February 2002, specifically relying upon his statutory authority to investigate and evaluate and his right to obtain access to documents.

[36] Dana Milbank, "GAO Takes White House to Court," 22 February 2002, accessed on the website of the *Washington Post Online* at http://www.washingtonpost.com, 5 March 2002.

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view. "If [Walker's concept of the GAO's authority] in fact were true there would be nothing in this White House, including any activity by the president or vice president, that would not be subject to investigation by the GAO," an administration aide said in an article in the *Washington Post*, which was assiduously following the case. Such investigative powers "would be an unconstitutional infringement on the powers of the presidency."[37] Also at issue was the GAO's contention that Cheney, in his role as head of an interagency task force, was not protected by the normal constitutional powers of the vice president. But the White House argued that Cheney was acting in his capacity as Vice President, not as head of a task force.

The GAO's legal action against the White House joined three private lawsuits filed by the conservative watchdog group Judicial Watch and the environmental groups Sierra Club and NRDC. But although those groups sought information under the Federal Advisory Committees Act and the FOIA, the GAO believed its authority as a congressional entity gave it more clout. The GAO's lawsuit argued that federal law "broadly authorizes GAO to investigate all matters relating to the use of public funds," and "confers broad authority on GAO to evaluate federal government programs and activities." The suit noted that for decades, the GAO had monitored and investigated thousands of executive branch activities. "During that period, the executive branch has complied with countless GAO requests for information." The lawsuit acknowledged that at times there had been disputes between the executive branch—including the White House—and the GAO concerning the scope of a particular request, but added that nonetheless, "until the instant dispute, accommodations have generally been reached, and GAO has never been forced to file suit to obtain access to records." The complaint claimed that despite the reasonable accommodations the Comptroller General had made, the Vice President refused to provide records that the head of the GAO was statutorily entitled to inspect. The lawsuit named Cheney both as the official who served as the chairman of the task force and in his official capacity as the Vice President.[38]

Although the White House carefully refrained from invoking a claim of executive privilege in the case, its lawyers contended that Cheney was covered under the same executive privilege as the President. This assertion was a highly questionable, if not revealing, supposition, because the Constitution does not vest executive authority in the vice president, but rather relegates his office to legislative matters. The assertion seemed indicative of a conception of Vice President Cheney as a co-executive in the White House, with the full privileges of the president. Whether Cheney was covered by executive privilege was beside the point, however, inasmuch as the GAO filed its suit against the Vice President solely in his capacity as head of an agency, the national energy task force. Nonetheless, in response to the lawsuit, senior administration officials

[37] Milbank, "White House Girds."

[38] See *Walker v. Cheney*, Complaint for Declaratory and Injunctive Relief, 6.

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said they welcomed the GAO's legal action and expressed confidence that the White House would prevail. "There is an important principle here," Alberto Gonzales, the White House counsel, said in an interview. "We view this as a matter of statutory construction. Does the GAO have the authority under the governing statutes to conduct this kind of investigation of the vice president and his advisers? We do not believe the statute provides that kind of authority."[39] In Congress, Henry A. Waxman and John D. Dingell, both of whom had sought the documents in April 2001, applauded the filing of the lawsuit, noting that Americans should know the truth about who was influencing public policy.[40]

Private Litigants Win Release of Documents

Despite considerable fanfare surrounding the filing of the GAO's lawsuit, the focus quickly shifted back to the private litigants. On 28 February 2002, one week following the GAO's legal action, federal judge Gladys Kessler of the U.S. District Court in Washington ordered the Bush administration's Energy Department to turn over 7,500 pages of documents pertaining to Cheney's energy task force, a decision that made public for the first time detailed information about the influence of industry executives and others over the White House's energy policy. The court order, in response to the suit by the NRDC, represented a significant setback to the Bush administration, which cited confidentiality of executive branch discussions as the rationale behind their refusal to release the documents. The order required the Energy Department to disclose documents revealing the contacts between outside groups and numerous department staffers working on Cheney's interagency task force. The NRDC predicted that it would receive most of the information sought by the GAO, which could defuse the battle between Congress and the executive branch. The judge declared that "there can be little question that the Department of Energy has been woefully tardy" in responding to the NRDC's FOIA request and that the information requested by the plaintiffs was of "extraordinary public interest," especially since "the terrible events of September 11, 2001." The NRDC had filed its suit in December 2001, after eight months of requests for the information had produced only thirty-three documents—a release the court order called "virtually meaningless." Commenting on the ruling, NRDC lawyer Sharon Buccino quipped: "This is going to expose the Bush energy plan for what it is—payback to polluters."[41]

[39] See Milbank, "GAO Takes White House to Court"; and Dan Van Natta, Jr., "Agency Files Suit for Cheney Papers on Energy Policy," 23 February 2002, accessed on the website of the *New York Times Online* at http://www.nytimes.com, 23 February 2002.

[40] Dan Van Natta, Jr., "Agency Files Suit for Cheney Papers."

[41] Dana Milbank and Ellen Nakashima, "Energy Department Ordered Release of Documents," *Washington Post*, 28 February 2002.

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On the same day that Judge Kessler issued her court order on the NRDC case, Judicial Watch appeared in a pair of hearings in U.S. District Court in Washington. In both hearings, judges thwarted the administration's attempts to avoid identifying business executives who met with Cheney's group. "I assume the government is stalling," U.S. District Court Judge Emmet Sullivan said at a hearing on a lawsuit demanding the release of task force documents. Sullivan reluctantly gave the administration seven days to file written arguments on why the Cheney task force should be allowed to withhold documents. At the other hearing, Justice Department lawyers argued that the Judicial Watch lawsuit seeking documents from all federal agencies that were members of Cheney's task force should be dismissed. U.S. District Court Judge Paul Friedman scoffed that the case should be thrown out. "So what! This is just gamesmanship," Friedman said. After nine months, he said, the Bush administration had turned over almost no documents and was withholding tens of thousands of pages from public scrutiny.[42] Thus, one federal judge had ordered the Energy Department to release its documents on Cheney's task force, and another judge had indicated that he would rule similarly on documents held by nine U.S. agencies.

During a visit to Des Moines, Iowa, Bush told reporters that he was not concerned about documents being released by agencies under the FOIA but remained adamant against releasing details of meetings between Cheney and industry executives. "I receive advice and in order for people to give me sound advice, that information ought not to be public," Bush said. "And therefore, when the GAO overstepped its bounds to try to get advice given to the vice president and me, we resisted." The intention of the White House to keep the deliberations of its energy task force meetings shrouded in secrecy, even as thousands of related documents were poised for release, appeared to reveal a grand irony—that almost everything the GAO was suing for was about to be made a matter of public record.[43] But the prospect of other federal agencies releasing documents had little effect, either on the White House's campaign to fight the GAO to reassert certain prerogatives of the presidency, or on the GAO's ambitions to set legal precedent for greater oversight of the executive. Stephen Hess, a senior fellow at the Brookings Institution, observed that inasmuch as the White House had "already lost the political war, they may as well stay in there and see if they can win the philosophical war."[44]

The White House's fight with the GAO began to worry some Capitol Hill Republicans who supported the administration publicly but were growing more concerned about the case. Echoing this sentiment among Republicans, one congressional aide noted that "obviously the other court cases are strengthening

[42] "Bush Not Worried about Energy Papers," *The Associated Press*, 1 March 2002.

[43] Susan Cornwell, "Analysis: White House Digs In On Task Force Records," *Reuters*, 3 March 2002.

[44] Ibid.

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the GAO case. From a political point of view, the White House should have given up the records a while ago. But they are fighting over principle, and the final arbiter of principles is the judiciary."[45] Principles aside, however, it was clear that energy industry officials, including some from Enron, the very icon of corporate greed, had exercised influenced over the task force's deliberations. From the information that had already been made available, it appeared that energy firms that had made big financial contributions to the Bush campaign had exercised a strong hand in shaping the administration's energy policy. An editorial in the *Milwaukee Journal/Sentinel*, however, questioned why any of this information needed to be kept secret, because industry influence should have been expected. "If you're putting together a campaign against terrorists, you better check with soldiers. And if you're putting together a campaign to meet the energy challenges of the future and wean America from its reliance on foreign oil, you'd better make use of the expertise found in the energy industry. So what? Why keep any of this secret?"[46] Indeed, industry executives pointed out that they had met routinely in the past with White House officials, even during Democratic administrations, and that it was no secret within the industry which corporations had met with Cheney's task force. Some industry officials complained that Cheney's refusal to be more open was tarnishing the industry's image.

In early March 2002, in response to Judicial Watch's FOIA lawsuit against nine executive branch agencies, Judge Friedman ordered the release of thousands of additional energy task force documents and rejected the Bush administration's attempts to have the case dismissed on technical grounds.[47] The court's ruling went beyond Judge Kessler's order in support of the NRDC in setting a timeline for releasing the documents and in demanding an explanation as to why certain documents were being publicly withheld. One of the more recalcitrant agencies, the Environmental Protection Agency (EPA), had been withholding more than 19,000 pages, citing a "deliberative process" exemption under the FOIA. The lawsuit complemented Judicial Watch's second lawsuit, before Judge Emmet Sullivan, against Vice President Cheney and the energy task force under the open meetings law known as the Federal Advisory Committee Act. "The stone wall is beginning to crumble. The court's ruling is a victory for openness of government," said Judicial Watch chairman and general counsel Larry Klayman.

The release of the documents under the court orders on behalf of Judicial Watch and the NRDC provided the first glimpse into the behind-the-scenes efforts that shaped the administration's energy policy. The 11,000 pages of heavily redacted documents from the Energy Department bolstered the

[45] Ibid.

[46] "Cheney's Intransigence," *Milwaukee Journal/Sentinel*, 4 March 2002, 4.

[47] See *Judicial Watch, Inc. v. U.S. Department of Energy, et al.*, U.S. District Court for the District of Columbia, Civil Action No. 01-0981 (PLF).

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contention of Democratic lawmakers and environmental groups that the Bush administration had relied almost exclusively on the advice of executives from utility companies and producers of oil, gas, coal, and nuclear energy while the energy task force drafted recommendations that would vastly increase energy production.[48] The documents were most revelatory of Energy Secretary Spencer Abraham's meetings with major corporations, many of which were large contributors of unregulated soft money to the Republican Party during the 2000 election campaign. Between 14 February and 26 April 2001, the Energy Secretary met with executives from such groups as the National Association of Manufacturers, the Independent Petroleum Association of America, and the Nuclear Energy Institute. Top executives of Westinghouse Electric Corporation, Duke Power, Entergy, Exelon Corporation, UtiliCorp United, American Coal Company, and many others also met with Abraham.[49] Among the documents released was a letter from the Alliance of Automobile Manufacturers favoring tax credits for hybrid-fuel cells and fuel-cell vehicles and other incentives for fuel efficiency that were included in the energy task force report. Another company, Citgo, urged the White House to "exercise federal authority to prevent" states from implementing separate fuel standards. As a result, the Bush energy plan directed the EPA to work with states to eliminate the standards. An Energy Department e-mail indicated close collaboration with industry by showing that Texaco offered to help promote Bush's energy policy. In addition, the Southern Co., the largest provider of electric power in the Southeast, urged reform of the EPA's new source review program, then being used to compel utilities and refineries to spend billions of dollars on antipollution equipment. According to the Center for Public Integrity, Southern had donated $1.8 million to Republicans and had contributed $100,000 toward Bush's presidential inauguration expenses.[50]

Amidst these revelations, the administration denied charges that it had rebuffed efforts by environmental groups to meet with the energy task force. The Energy Department said that environmental groups had not responded to its request for advice, and the administration claimed to have held at least one major discussion with ten environmental groups in late March 2001, prior to releasing its energy policy. The Energy Department, moreover, released a chart indicating that Cheney's task force had adopted nine NRDC recommendations, which NRDC attorney Sharon Buccino called "an outright lie."[51]

On 12 July 2002, U.S. District Court Judge Emmet Sullivan issued his written order and opinion allowing the Sierra Club and Judicial Watch to

[48] Dana Milbank and Mike Allen, "Energy Contacts Disclosed," *Washington Post*, 26 March 2002; and "Documents Reveal Energy Head Met No Environmentalists," *The Associated Press*, 26 March 2002.

[49] Milbank and Allen, "Energy Contacts Disclosed."

[50] "Documents Reveal Energy Head Met No Environmentalists."

[51] Milbank and Allen, "Energy Contacts Disclosed."

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proceed with their suits challenging the Bush administration's attempts to keep Cheney task force meetings with industry executives secret.[52] The opinion followed his oral ruling on 23 May, rebuffing the administration's motion to dismiss the lawsuits, and was notable in recognizing the administration's executive-centered concept of the federal government. Sullivan's opinion called "troubling" the administration's argument that the two groups should not be allowed to sue for documents about the task force under the Federal Advisory Committee Act. According to Sullivan, by the Bush administration's reasoning, "any action by Congress or the Judiciary that intrudes on the president's ability to recommend legislation to Congress or get advice from Cabinet members in any way would necessarily violate the Constitution." Such a "ruling would eviscerate the understanding of checks and balances between the three branches of government on which our constitutional order depends," the opinion said. "The fact that the government may want to advocate a new theory of executive authority and the separation of powers is its prerogative. It cannot, however, cloak what is tantamount to an aggrandizement of executive power with the legitimacy of precedent where none exists."[53] Sullivan criticized the Justice Department lawyers defending the Cheney task force for mischaracterizing a minority opinion in a Supreme Court case as controlling legal authority that should result in the dismissal of the lawsuits. Sullivan was referring to the case *Nixon v. Administrator of General Services* (1977), in which former President Richard M. Nixon lost his constitutional bid to reclaim ownership over his presidential records and tapes, which had been seized by an act of Congress for the continuing Watergate trials and investigations. It seemed peculiar that administration lawyers would use the minority opinion in this case, written by Justices Warren Burger and William Rehnquist, as an underpinning rationale for its defense, especially since the majority Court rejected Nixon's extreme concept of executive privilege.[54]

In response to Sullivan's written opinion, a Justice Department lawyer said that the administration would consider all of its options and would issue a counterproposal. In a hearing in August, however, Sullivan scarcely liked what he heard. Although some of the federal agencies involved in the task force had been ordered to turn over thousands of pages of documents, the Bush administration balked at Sullivan's order of 11 July that it begin providing more-detailed membership information, including White House records. Sullivan was exasperated with the government's claim that executive privilege and the Administrative Procedures Act shielded such information from public

[52] *Judicial Watch v. National Energy Policy Development Group*, Civil Action 01-1530 (EGS) and *Sierra Club v. Vice President Richard Cheney, et al.*, Civil Action 02-631 (EGS), U.S. District Court of the District of Columbia, 12 July 2002.

[53] *Judicial Watch v. National Energy Policy Development Group* and *Sierra Club v. Vice President Richard Cheney, et al.*; also see *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977).

[54] *Judicial Watch v. National Energy Policy Development Group*, and *Sierra Club v. Vice President Cheney, et al.*

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disclosure. "Your position seems to be 'the government wins because the government says this is what happened, and no one can ask what happened,'" Sullivan said. "Discovery is going forward in this case." David Bookbinder, senior attorney for the Sierra Club, and Judicial Watch chairman Larry Klayman described the ruling as a clear victory. "The administration's arrogance can be amazing," Bookbinder said. "We want to see all these documents, and then we'll be able to tell what else we need."[55]

CHENEY V. GAO IN COURT

As the private litigants pursued their case against the administration, the GAO's suit made its way through the federal judicial system. On 28 September 2002, lawyers for the GAO and Cheney clashed before a federal judge, with both sides claiming irreparable harm from a ruling against them as the historic showdown between the two branches of government got under way. As Judge John D. Bates of the Federal District Court realized, the lawsuit raised a fundamental constitutional question concerning whether a vice president could ignore a request for information by the GAO, acting on behalf of Congress, without the president exercising executive privilege. The case also continued to threaten to tarnish the White House, because the dispute made it difficult for the administration to distance itself from the scandal of the Enron Corporation, whose executives met with Cheney and other task force members seven times in 2001.

Carter Phillips, the outside attorney representing the GAO, argued that if the administration won the case, it would cripple the GAO's ability to carry out its fundamental responsibilities. "The executive branch is asking the court to deal blows . . . that would be extremely damaging or fatal to the GAO's ability" to investigate the executive branch, said Phillips. "It would have an extraordinarily sweeping effect and would significantly halt Congress's use of the GAO to conduct nonpartisan investigations." Phillips argued that Title 31, the legislation delineating the powers of the GAO, allowed the comptroller general to "investigate all matters related to the receipt, disbursement and use of public money." He also contended that the law gives the comptroller general the right to obtain all "information the comptroller requires about the duties, powers, activities, organization and financial transactions" of the agency under investigation.[56] The GAO's legal brief stated that the executive branch had complied with "countless" GAO requests for similar information, including records on the White House China Permanent Normal Trade Relations

[55] Neely Tucker, "White House Told To Turn Over More Data on Energy Panel," *Washington Post*, 3 August 2002.

[56] Don Van Natta, Jr., "Cheney Argues against Giving Congress Records," 28 September 2002, accessed on the website of the *New York Times Online* at http://www.nytimes.com, 28 September 2002. See also "Neely Tucker, "Cheney-GAO Showdown Goes to Court," *Washington Post*, 28 September 2002.

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Working Group and White House records that involved an investigation of alleged vandalism by the outgoing Clinton administration.

But Paul Clement, the principal deputy solicitor general, representing Cheney, countered that the agency had no legal standing to sue the Vice President and was overstepping its authority in seeking information on executive deliberations. "No court that I am aware of has ever ordered the executive branch to turn over a document to a Congressional agent," Clement argued. "This is unprecedented. It would allow a revolution in the separation of powers."[57] Clement warned that if the administration were ordered to release the information, there would be no end to similar lawsuits filed by the GAO against the executive branch. There were other means that Congress could have used to obtain the documents, said Clement, including a subpoena sent by the House Governmental Affairs Committee on which served Representatives Waxman and Dingell—the two Democratic lawmakers who had requested the GAO investigation of the Vice President's energy task force. Clement was joined at the defense table by the solicitor general, Theodore B. Olson, who was known to seldom attend arguments at the district court level. Olson's presence indicated the significance of the case to both Cheney and Bush, who proclaimed that disclosure of the information would severely hinder the ability of the executive branch to solicit the advice of outside experts.

Thus, the matter of how much privacy the Bush White House should have resided with Federal U.S. District Court judge John Bates, who had been in office less than a year before being subjected to the powerful crosscurrents of an unprecedented lawsuit brought by the investigating arm of Congress against the Vice President. Leading critics of the White House saw Bates's political connections—an appointee of President Bush, with many friends in the administration—as an ominous sign. At the same time, Bates's background seemed to give the GAO some grounds for hope. In 1977, as a deputy to White House prosecutor Kenneth W. Starr, Bates had compelled the release of White House documents in a case before the Supreme Court. Nonetheless, the two cases were different. Bates's win before the Supreme Court was an attorney–client privilege case involving notes of then-first lady Hillary Rodham Clinton's conversations with government lawyers concerning her former law firm's billing records. The *Walker* case, however, rested on the GAO's statutory authority to sue the executive branch.

But the similarities between the two cases were strong, as well. In both cases, the White House argued that disclosure of presidential deliberations would have a chilling effect on advisors and hinder presidential decision making. In both cases, the White House claimed that its opponents were on fishing expeditions and that the matter should be handled in the legislature, rather than in the courts. In both cases, the White House also decided not to invoke executive privilege, perhaps mindful of the image of Watergate and the

[57] Ibid.

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prospect of raising a host of unresolved constitutional issues. In the immediate case, it was unclear whether Cheney could claim executive privilege, because the vice president has no constitutionally assigned executive function. Under the Constitution, the vice president's role is legislative in nature—to preside over and break ties in the Senate. In addition, in the early stages of the dispute, the GAO had dropped its demand for information about the deliberations of Cheney's energy task force group, requesting only the names of participants in the meetings and other nondeliberative information. As a result, it was not clear whether an assertion of privilege, even if it did apply, could extend beyond the content of the discussions to cover information about who was involved in the meetings. Thus, there was no advantage in the Vice President asserting a dubious privilege claim, which only would have immensely complicated and weakened the administration's case.[58]

The ruling involving fundamental constitutional issues was not long in coming. On 9 December 2002, Bates threw out the case against Vice President Cheney over the formulation of the administration's energy policy.[59] Although acknowledging the importance of the case as a "struggle between the political branches that is historically unprecedented," Bates nevertheless found that the GAO did not have sufficient constitutional standing to sue the Vice President. In dismissing the suit, Bates grounded his decision in the Vice President's core arguments, premised largely on the Supreme Court's ruling in *Raines v. Byrd*, which addressed whether six members of Congress could sue under the Line Item Veto Act of 1996. Although the statute expressly provided for congressional members to bring action if they were adversely affected by the Act, the Court held that no such standing existed. The Court found that the congressional members who filed suit had no constitutional standing because they had sustained no personal injury, that any claim that Congress itself suffered an institutional injury was a mere abstraction, and that Congress could have pursued other remedies, including repealing the law. Moreover, the Court stressed that the congressional plaintiffs had received no authorization to represent their respective Houses of Congress in the lawsuit and that both Houses opposed the suit. Cheney's lawyers contended that the 1980 statute providing for GAO judicial enforcement powers was similarly unconstitutional under the *Raines* precedent and asked that the case be dismissed with prejudice for lack of standing.

Siding with the Vice President and adopting the *Raines* criteria, Bates held that the court had to conduct an especially rigorous standing inquiry, given the

[58] See Michael C. Dorf, "A Brief History of Executive Privilege, From George Washington Through Dick Cheney," 6 February 2002, accessed on the website of *Findlaw Online* at www.http://findlaw.com/dorf/20020206.html, 6 February 2002; see also *Office of the President v. Office of Independent Counsel*, 117 S. Ct. 2482 (1997); and *David M. Walker v. Richard B. Cheney*, U.S. District Court for the District of Columbia, Civil Action 02-0340 (JDB), 9 December 2002, 23–30. Also see Dana Milbank, "Is Judge's Past Prologue in Cheney Case?" *Washington Post*, 26 November 2002.

[59] *Walker v. Cheney*, 23–31.

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core separation-of-powers questions at issue. As a result, Bates found that the suit against the Vice President established neither a personal injury to Walker nor an institutional injury to Congress sufficient to merit standing. Walker had suffered no concrete personal injury, because he was acting wholly in his official capacity as GAO's Comptroller General, and Congress had sustained no institutional injury beyond a mere "abstract dilution of institutional legislative power," which was too "vague and amorphous to confer standing." Further, Bates said that Congress had undertaken no effort to obtain the documents at issue, that no committee had requested the documents, that no congressional subpoena had been issued, and that an injury to any congressional right to information thus remained "wholly conjectural or hypothetical." Bates therefore found it of "some importance" that, "like the plaintiffs in *Raines*, the Comptroller General here has not been expressly authorized by Congress to represent its interests in this lawsuit."[60] The decision marked a significant triumph for the Bush White House, which seized upon the case as a vehicle for reversing what it saw as a generation of congressional encroachment on the prerogatives of the executive branch. At the same time, the decision was a blow against congressional oversight of governmental affairs. The ruling was in direct conflict with a 1980 law that gave the GAO the authority to sue.[61]

With some consternation, Susan Low Bloch, a professor of constitutional law at Georgetown University Law Center, commented that if left to stand, the opinion would "definitely" be precedent setting. "It will make it a lot more difficult for the GAO to even negotiate for documents," she said.[62] Waxman and Dingell both assailed the opinion. A "Republican judge has decided that, once in office, Bush and Cheney can operate in complete secrecy with no oversight by Congress," Waxman said.[63] In a written statement, David Walker expressed his disappointment and said that a decision would be made on whether to appeal after analyzing the potential implications of the ruling and consulting with "congressional leadership on a bipartisan basis."[64]

GAO Drops Suit against the White House

At the time that the GAO filed its suit—representing the most significant confrontation between the government's legislative and executive branches since Watergate—no one could have foreseen that the case would have been

[60] *Walker v. Cheney*, 29–30.

[61] See *Walker v. Cheney*, 2; David Stout, "Judge Rebuffs Effort to Obtain Records on Cheney Task Force," nytimes.com, 9 December 2002; Pete Yost, "Lawsuit Against Cheney Energy Task Force Dismissed," *Associated Press*, 9 December 2002; and Neely Tucker, "Suit Versus Cheney Is Dismissed," *Washington Post*, 10 December 2002.

[62] Tucker, "Suit Versus Cheney Is Dismissed."

[63] Ibid.

[64] Ibid.

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ended so abruptly by a shift in the political winds with the November 2002 elections. Under heavy political pressure from Republicans, who had won majorities in both houses of Congress, the GAO capitulated and dropped the suit, ending a dispute between the two branches that had spanned nearly two years. On 7 February 2003, the GAO announced that it was terminating its lawsuit against the Vice President, a decision that scholars said would significantly weaken the legislature's ability to investigate the activities of the executive branch. The GAO said that it would not appeal Judge Bates's federal court ruling that denied the GAO the right to force Cheney to turn over information about which individuals and groups met with the Bush administration's energy task force. The decision, which was hailed by the White House and condemned by Democrats and advocates of open government, was made despite the GAO's earlier concerns that accepting defeat would prove fatal to its ability to investigate the executive branch. Whatever the precise long-term consequences of the GAO's defeat, many lawyers interpreted it as crippling to the agency's ability to use the courts to enforce its demands for executive branch information.[65]

Although the White House praised Walker's decision to terminate the suit, Representative Waxman, who was one of the lawmakers who requested the investigation, said Walker's move was both "very disappointing" and a "tremendous setback for open government." Perhaps most revealing of the GAO's emasculation was Walker's own statement that he "hope[d] the administration [would] do the right thing and fulfill its obligations when it [came] to disclosures to GAO, the Congress, and the public." Indeed, the GAO, uncertain of the ramifications of its own decision to drop the suit under political pressure, now appeared to be reduced to merely hoping for executive branch compliance with its requests. It would have to rely on little more than executive grace when seeking information, rather than on statutory duty. Sharon Buccino, the NRDC lawyer pressing one of the private suits against the administration, said that the GAO's abandonment of the case meant that Congress's hands were "seriously tied" in overseeing the executive. "If the GAO does not have the right to go to court to enforce compliance with its requests for information, then there is no incentive for the executive or agencies to comply."[66]

Analysis of Walker's Decision to Terminate the Suit

After his defeat, Walker attempted to put the best possible spin on his decision to end the lawsuit. "Despite GAO's conviction that the district court's decision was incorrect, further pursuit of the [energy task force] information would require investment of significant time and resources over several years,"

[65] Dana Milbank, "GAO Ends Fight With Cheney Over Files," *Washington Post*, 8 February 2003.
[66] Ibid.

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Walker said in a publicly released statement. But this reasoning hardly sufficed, because all federal court appeals require an investment of significant time and resources. The appeal would have posed critically important questions concerning the balance of power between the government's legislative and executive branches, an issue that Walker had emphasized when he filed the lawsuit and that Judge Bates had purposely evaded by dismissing the suit without addressing its merits. Moreover, Walker said that the "court's decision is confined to the unique circumstances posed by this particular case and does not preclude GAO from filing suit on a different matter involving different facts and circumstances in the future."[67] This statement, however, contradicted the GAO's contention in court, which had argued that Cheney's position, if accepted, would decimate the agency's ability to obtain information from the executive branch under any circumstances. Indeed, Thomas E. Mann, a senior fellow in government studies at the Brookings Institution saw the decision as having major implications. "President Bush and Vice President Cheney have an extreme and relentless executive-centered conception of American government and it plays out every day, and there are dozens of fronts in this effort to strengthen the presidency," he said. "Power naturally gravitates to the presidency in times of uncertainty, but people are going to question putting all of our trust in an unfettered president."[68]

Walker's statement also stressed that his decision came only after "extensive outreach with congressional leadership and others concerning various policy matters and the potential ramifications of the court's decision." Evidently, Walker tried but failed to persuade the new Republican congressional leadership that the lawsuit was in the best interests of the GAO and Congress. But the pressure to drop the suit seemed to stem from a desire on the part of Republican leaders to prohibit any further embarrassing revelations of the Vice President's ties to the energy industry, including Enron, that would result from a court-ordered release of documents. They also may have feared that the GAO would lose its case before the Supreme Court, which would further gut the agency's investigative authority and erode Congress's oversight powers.

Indeed, from the beginning, the Vice President's sweeping attacks on the constitutionality of the GAO's request indicated that there was at stake a much larger agenda. Cheney's unyielding stance, together with his argument that the Comptroller General was seeking a revolution in the separation of powers, pointed the way toward a showdown before the Supreme Court with the intent to expand executive prerogatives and diminish legislative authority. The Vice President and his government lawyers had aimed from the start to build a case to take to the same Supreme Court that had both handed the 2000 presidential election to the Bush-Cheney administration and that had,

[67] Ibid.
[68] Ibid.

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since 1995, been set on limiting congressional power. Commenting on the *Walker* case in October 2002, former Nixon counsel and FindLaw commentator John W. Dean noted that in the "noble name of federalism, the Supreme Court, under Chief Justice William Rehnquist, [has been] on the warpath against the Congress." Not since the days of Republican Chief Justices William Howard Taft and Charles Evan Hughes, said Dean, had the Supreme Court been more hostile toward congressional power. In cases that came before the Court, the majority of the justices, including Rehnquist, Antonin Scalia, Clarence Thomas, Anthony M. Kennedy, and Sandra Day O'Connor, issued opinions aimed at limiting congressional power under the Commerce Clause and the Fourteenth Amendment, the two primary constitutional bases permitting Congress to initiate nationwide actions.[69] Accordingly, in their court papers, the Vice President's lawyers drew heavily on the Rehnquist Court's anti-congressional opinions, hoping to roll back the investigative powers of Congress.[70] As a result, Walker might have won his case at the appellate level if the courts had agreed to consider the merits of the suit, but his chances of sustaining such a ruling or overturning a negative opinion before the Supreme Court were slim.

Theoretically, Walker could have continued the fight for the energy task force documents and, by extension, could have carried out his larger quest both to defend his agency's statutory authority to sue for access to information and to strengthen the GAO's investigative powers and oversight of the executive branch. But he would have done so amidst political hostility and isolation, which would have hindered considerably the agency's ability to function. With the Republicans in control of the White House and Congress after the 2002 elections, the GAO found itself in a losing position, no matter which way it turned. Walker evidently found the political risks of appealing the Bates decision too high after receiving threats of reprisals from Republican lawmakers. In a meeting with Republican Senator Ted Stevens, chairman of the powerful Appropriations Committee, Walker was allegedly warned to either drop the suit or face cuts to the GAO's budget.[71] To further placate the GOP, Walker indicated that he would voluntarily withdraw the GAO's authority to litigate without the imprimatur of at least one full committee. In a letter informing Waxman about the GAO's decision not to appeal, Walker wrote that "given the district court's decision, and other considerations, as a

[69] See Erwin Chemerinsky, "The Constitutional Jurisprudence of the Rehnquist Court" in Martin H. Belsky, ed., *The Rehnquist Court: A Retrospective* (Oxford and New York: Oxford University Press, 2002), 197–198.

[70] John W. Dean, "The Ongoing Fight Between the Supreme Court and Congress, As Illustrated By The GAO/Cheney Suit: Part Two In a Series On Shrinking Congressional Powers," accessed on the website of the Freedom of Information Center at http://foi.missouri.edu/execprivilege/ongoingfight2.html, 15 March 2003.

[71] Peter Brand and Alexander Bolton, "GOP Threats Halted GAO Cheney Suit," *The Hill*, 19 February 2003; and T. J. Halstead, "The Law: Walker v. Cheney: Legal Insulation of the Vice President from GAO Investigations," *Presidential Studies Quarterly* 33 (September 2003): 646.

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matter of procedural prudence, I believe it would be appropriate to have an affirmative statement of support from at least one full committee with jurisdiction over any records access matter prior to any future court action by GAO."[72] By "other considerations," Walker may have been referring to GOP pressure to drop the suit.

Walker's statement indicated that the GAO would now live within the confines of the Bates opinion. Accordingly, having sacrificed its independence, the GAO would pursue court actions to enforce its rights to documents only with the blessing of the majority party in Congress. As a result, the GAO indicated that it would no longer be willing to pursue important or controversial assignments on its own or on behalf of minority committee members, nor would it be likely to have any resolve to confront the White House over access matters without strong congressional support. In this new era, the majority party would dictate GAO action; the minority party would have no say in initiating investigations.

In the end, Walker was facing a situation in which he had already suffered a court defeat at the hands of a Republican judge with ties to the Bush administration, was under considerable political pressure from a Republican-controlled Congress to drop the suit, and was looking at the prospect of ultimately arguing the case before a conservative Supreme Court whose majority members were intent on circumscribing congressional authority. Given these odds, Walker and his attorneys may have figured it was best to effect a strategic retreat and reserve the GAO's fight over its judicial authority for another day under more favorable circumstances.

With some justification, and despite his lost cause, Henry Waxman accused the Republicans of "breathtaking" hypocrisy. During the Clinton years, congressional committees—at the initiation of Republicans—spent over $15 million investigating the White House. They demanded and compelled the disclosure of internal White House memos, e-mails, phone records, even lists of guests at White House movie showings; they initiated numerous GAO investigations ranging from Clinton's health care task force to his working group on China permanent normal trade relations; and they subpoenaed top administration officials to testify about advice given to the President. By Cheney's standards, the intrusion into the prerogatives of the presidency was extraordinary. Nonetheless, before the television cameras, in the newspapers, and in the halls of Congress, Republican leaders, with a rhetorical flourish, insisted that it was the public's right to know and congressional oversight that were paramount. Now that "President Bush and Vice President Cheney are in office," said Waxman, "suddenly these priorities have changed. Oversight is no longer a priority. In fact, it's something to be avoided at all costs, including sacrificing the independence of the GAO. Even when GAO asks for the most

[72] See letter from GAO Comptroller General David Walker to Representative Henry Waxman, 7 February 2003; and Halstead, "The Law: Walker v. Cheney," 646.

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basic information—what private interests met with a White House task force—the answer is that GAO is not entitled to ask these questions."[73]

Whatever the politics of the matter, the implications of the GAO's decision not to appeal may be far-reaching. If *Walker* is interpreted broadly, the GAO may no longer be armed with judicial enforcement powers to compel or leverage the release of information from either the White House or executive branch agencies. In the past, the GAO's investigative authority and independence have been critical for congressional oversight. Since the GAO's creation in 1921, Congress has increasingly relied on the agency to monitor and oversee an executive branch that has undergone enormous expansion in size and power. Seemingly determined to veil its actions behind new screens of secrecy and to expand the prerogatives of the presidency, the Bush administration was eager to provoke a fight that would cripple the GAO's oversight function. Walker said that his decision to terminate the lawsuit would have little effect on the agency's daily operations, which involve primarily the auditing and evaluation of government programs. But the irony of this statement was hard to miss, given that his ambitions in the case were to expand the agency's investigative and oversight powers of the executive.

It remains to be seen whether the Bates decision will be interpreted as applying only to the specifics of the *Walker* case, with little or no impact on future court actions, as Walker said after the court's decision, or whether it will be read more broadly, precluding suits against the vice president and president. The latter case would not necessarily prohibit the GAO from bringing suit against executive agencies, which are the focus of the vast majority of its reviews and investigations. Nevertheless, if Bates's "rigorous" standing requirements are extended to executive branch agencies, it would strip the GAO of its judicial enforcement powers altogether. After all, Judge Bates singled out Walker in his opinion, not Cheney. He concluded that as an agent of Congress, Walker had "no personal stake" in the dispute and consequently no constitutional standing to sue, despite the GAO's statutory authority to bring court actions. Under this reasoning, no comptroller general would ever have a sufficient personal stake to meet standing requirements—not even in a case brought against the head of an agency. If sustained in the future, Bates's reasoning means that executive branch officials would be able to refuse a GAO request for information and the agency would be able to do nothing about it.

Should this outcome be the case, the 1980 law expressly granting GAO statutory authority to pursue court actions, which has proven effective countless times in the past by prompting negotiation and compromise for release of information, would be nothing but a dead statute.[74] It would largely return the agency to where it was before 1980, when the White House and executive

[73] See Remarks by Henry A. Waxman, "Cheney Task Force Records and GAO Authority," U.S. House of Representatives, Committee on Government Reform, Minority Office, 12 February 2003.

[74] Halstead, "The Law: Walker v. Cheney," 642–643.

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branch agencies routinely stonewalled GAO requests for information to which it had the right of access by law. Congress addressed this problem by passing legislation authorizing the comptroller general to pursue court actions to compel the disclosure of documents by the executive branch in cases in which it had failed to comply with a request for information.[75] By granting the GAO the power to sue, Congress believed that, over time, it would minimize, if not virtually eliminate, access problems. Congress also made clear that the agency's newly granted judicial authority could be used against the president and his principle advisers. The Senate report concerning the statute, for example, stated that "with regard to enforcement actions at the Presidential level, certifications provided for under section 102(d)(3) of the bill are intended to authorize the President and the Director of the Office of Management and Budget to preclude a suit by the Comptroller General against the President and his principal advisers and assistants, and against those units within the Executive Office of the President whose sole function is to advise and assist the President, for information which would not be available under the Freedom of Information Act."[76] With this passage, the executive branch fully understood Congress's intent to authorize judicial actions for access to White House documents, and that as a matter of compromise, it would be given the means through a certification process to prohibit disclosure. The 1980 act was introduced just months after two GAO access disputes with the White House, a fact noted by Congress in passing the statute.

The 1980 law reflected Congress's strong institutional interest in seeing that the GAO remained a "principal means by which the legislative branch conducts oversight of Executive Branch programs and expenditures." The Senate report concerning the General Accounting Act of 1980, the bill granting GAO judicial enforcement authority, stressed that since the agency's creation in 1921, Congress, by necessity, had become more reliant on GAO assistance in fulfilling its oversight and legislative responsibilities. The report noted that the GAO "not only provides Congress with essential information about Federal programs, but, uniquely, exercises statutory authority to participate directly in the oversight process as an independent congressional entity." Since its establishment, the broad array of emerging problems and the complex economic, social, military, and political issues that have confronted Congress have led to an expansion of the GAO's responsibilities, from traditional finance and accounting activities to assessments of the effectiveness of executive agencies. By passing a series of measures, including the Budget and Accounting Procedures Act of 1950, the Legislative Reorganization Acts of 1946 and 1970, and the Congressional Budget and Impoundment Control Act of 1974, Congress made "mandatory, explicit, and emphatic the requirement for GAO to assess the efficiency, economy, and effectiveness of program operation by the Executive

[75] See Senate, 96th Cong., Senate Report No. 96-570 (1980), 5.
[76] Ibid., 8.

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Branch."[77] By law, it could launch investigations or evaluations on its own initiative or at the request of a committee or subcommittee or member of Congress.[78] But it was this explicit congressional recognition of the GAO's independent status, with delegated authority to conduct autonomous investigations, including making stand-alone requests for information from the executive branch, which came under sweeping attack by the Vice President's lawyers and which drew little support from Republicans who controlled both the House and the Senate and seemingly viewed the GAO's lawsuit at the behest of two ranking House Democrats as a political attack upon the George W. Bush administration.

To be sure, the vast majority of the GAO's audits and reviews of federal programs are unlikely to be affected by the Bates decision. Indeed, the GAO's hundreds of annual investigations meet with little agency resistance and enjoy broad bipartisan support from congressional committee and subcommittee members who are intent on exercising their oversight prerogatives. In addition, under its decentralized system of semiautonomous committees, Congress has a variety of other means for obtaining information on executive activities and holding agencies accountable. These methods may include committee and subcommittee hearings and investigations, agency reporting requirements, confirmation hearings, casework, authorization and appropriations processes, informal communications between committee members and staffers with agency officials, and data provided by private interest groups, lobbyists, constituents, and others with a stake in the outcome of federal programs.[79] Further, oversight committees may rely on data analysis from other legislative support agencies, including the Congressional Research Service, the Office of Technology Assessment, and the Congressional Budget Office. With this arsenal of oversight powers, Congress can make the lives of executive officials difficult if they prove unresponsive to demands for information, programmatic improvement, or reform. Because Congress has ultimate authority to create or abolish bureaucracies, expand or diminish their powers and responsibilities, increase or decrease their staffs and budgets, and determine the parameters of what they do, agency officials have political incentive to cooperate with congressional oversight committees that control their authorization and budgets.

Nonetheless, even with this formidable array of oversight powers, Congress relies on the GAO, with its thousands of professionals, as its principal investigative arm. The GAO is frequently called upon by almost every major congressional committee to prepare comprehensive reports, studies, and reviews, or to conduct investigations into the practices, program performance, and activities of the executive. If the GAO's decision not to appeal means that

[77] Ibid., 2.

[78] Bernard Rosen, *Holding Government Bureaucracies Accountable* (New York: Praeger Publishers, 1989), 75.

[79] Rosen, *Holding Government Bureaucracies Accountable*, 24.

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its delegated investigative authority will be compromised during access disputes with executive agencies or the White House, then Congress may have to resort to more-cumbersome processes—such as holding hearings, calling witnesses, issuing subpoenas, initiating contempt proceedings, or passing or threatening legislation to curtail agency programs and budgets—to compel the disclosure of information.

These methods are fraught with partisanship, however, and may be of little use when the majority party owns both the White House and Congress. Initiating contempt proceedings, for example, or passing program cuts requires getting a majority of Congress or at least one house to initiate action. Further, the majority party in Congress controls the political agenda. In the present case, in which the Republicans control both chambers, the minority party—the Democrats—cannot schedule congressional hearings, require testimony, issue subpoenas, demand a special counsel, or (evidently, now) rely on the GAO to acquire information from the White House. Few committee chairmen of either party have much inclination to use these means to investigate a president who is the leader of their own party. Moreover, the executive branch is unlikely to readily entertain calls by congressional opponents to appoint special counsels to investigate itself if presidential stakes are involved. Indeed, the Justice Department has declined several calls by Democrats to appoint special counsels to investigate Republican conduct—including, for example, campaign contributions to Republicans by Westar Energy, a Kansas utility seeking regulatory exemptions, or whether there were conflicts of interest in the administration's inquiry into the collapse of Enron. Neither have the Democrats been able to convene hearings on White House policy and other issues of concern, leaving them to demand answers through press releases, op-ed articles, and open letters, hoping for news coverage and public pressure. With few exceptions, most notably the Senate Intelligence Committee's investigation of American intelligence failures in Iraq and the special 9/11 Commission—both of which were set up in response to enormous political and public pressure—Republicans have avoided holding hearings that might embarrass the President, a contrast to the forty subpoenas, three investigative hearings, and appointment of five special counsels that congressional Republican leaders directed against the Clinton White House by the end of his first term alone. To a large extent, in matters of oversight, partisans on both sides of the aisle have switched sides. Democrats like Waxman, who decried the investigations of the Clinton White House, now complained of lacking the means, through the GAO and other ways, to obtain information from the Bush White House. Republicans like House Majority Leader Tom Delay, who defended the Clinton-era inquiries, dismissed calls for investigations and hearings as nothing more than the "politics of personal destruction."[80]

[80] Susan Page, "Bush Unscathed by Investigations," *USA Today*, 13 August 2003.

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AFTERMATH

On 12 April 2003, the GAO released its report on Cheney's energy task force, the culmination of its long battle with the Bush administration. The report bolstered the Democrats' contention that Bush's energy policy relied heavily on advice provided by representatives and lobbyists of major energy corporations and criticized the White House for repeatedly denying congressional investigators access to documents concerning the secret energy task force meetings.[81] With the release of the GAO's report, the long battle between the agency and the Vice President came to a close, giving way to the continuing litigation by the Sierra Club and Judicial Watch seeking much the same information on the workings of the energy task force. The case that began with pedestrian discovery requests in two consolidated civil suits moved quickly to the Supreme Court. The suit against the Vice President was similar to the GAO's, involving separation-of-powers issues and whether Cheney could keep information about his energy task force's meetings secret. Both the Sierra Club and Judicial Watch claimed that the task force violated the Federal Advisory Committee Act, which requires that its activities and records be open to the public if nonfederal individuals participated. The plaintiffs argued that energy industry representatives and lobbyists who were major donors and political allies of the administration were so integral to the task force's deliberations that they constituted de facto members of the group, a charge that Cheney denied. The Vice President claimed that the requests for information intruded into the heart of executive deliberations and that to make even a preliminary disclosure to the courts would violate the constitutional separation of powers between the executive and judicial branches. The case came amid election year politics as Democrats sought to highlight Cheney's resistance to releasing the records as part of the Republican administration's overall pattern of shrouding its activities in secrecy and doling out special favors to big corporate donors.

After losing rounds in the U.S. District Court and the Court of Appeals, on 15 December 2003, the Supreme Court agreed to hear arguments from the George W. Bush administration concerning why it should not be ordered to disclose documents about Cheney's energy task force. While pending at the Supreme Court, the case became embroiled in new controversy after the *Los Angeles Times* reported that on 5 January 2004, Justice Antonin Scalia accompanied Vice President Cheney aboard Air Force Two on a duck-hunting vacation to Southern Louisiana. The vacation was hosted by Wallace Carline, president of an energy services company. The trip, coming just three weeks after the Court agreed to hear the Vice President's appeal, created a storm of controversy over the appearance of a conflict of interest and blatant personal and political favoritism. Many Court observers and the nation's leading

[81] Mike Allen, "GAO Cites Corporate Shaping of Energy Plan," 16 August 2003, accessed on the website of the *Washington Post Online* at http://www.washingtonpost.com, 16 August 2003.

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newspapers excoriated Scalia for compromising the public's confidence in the Court and called for his immediate recusal in the interest of promoting the Court's credibility. In response, a combative Scalia issued an unprecedented twenty-one-page memorandum "bristling with defiance," and refusing the demand that he remove himself from the energy task force case.[82]

On 24 June 2004, the Supreme Court rendered a decision that appeared to give Vice President Cheney more than a legal victory. The Court's 7–2 majority requiring the U.S. Court of Appeals for the District of Columbia to reconsider its opinion in the case meant that none of the documents presumably implicating Cheney's close ties to energy industry officials who significantly shaped the administration's energy policy would be released before the November 2004 presidential election. In rendering this decision, the Court both ensured more federal litigation over the propriety of White House confidentiality and spared the White House the embarrassment of an election year dispute among the administration, the courts, and two watchdog groups seeking public disclosure of energy task force documents. The majority opinion, written by Justice Anthony Kennedy, warned that federal judges must pay deference to White House claims of secrecy and confidentiality, advised that private deliberations among a president and his top advisors are entitled to special consideration arising from the constitutional principle of executive privilege, and criticized the sweeping request for documents by the Sierra Club and Judicial Watch as "unbounded in scope" and "anything but appropriate."[83] Although some observers viewed the ruling as a big victory for Cheney and his lawyers, others saw grounds for hope for the two groups as their case for disclosure remained alive. "It's a loss," said Alan Morrison, who brought the case for the Sierra Club, "but it's about as good a loss as we can have."

Although the Court's opinion bought the administration more time, if it lost in the appeals court, the White House probably would have returned to the Supreme Court, given its June 2004 ruling in deference to the Vice President's arguments on behalf of executive confidentiality. On 10 May 2005, however, the full United States Court of Appeals for the District of Columbia voted 8 to 0 to uphold the administration's argument that forcing the executive branch to provide information on internal policy deliberations would violate the president's constitutional powers. The decision all but ended the four-year legal battle over Cheney's refusal to disclose information about the task force. The

[82] Steve Twomey, "Scalia Angrily Defends His Duck Hunt With Cheney," 18 March 2004, accessed at the website of the *New York Times Online* at http://www.nytimes.com, 18 March 2004; and "Scalia Refuses to Recuse Himself in Cheney Case," *The Associated Press*, 18 March 2004.

[83] Tom Curry, "Cheney's Win: More than Legal," 24 June 2004, accessed on the website of MSNBC Online at http://www.MSNBC.com, 24 June 2004; Warren Richey, "Cheney Wins a Round on Paper Trail," 25 June 2004, accessed on the website of the *Christian Science Monitor Online* at http://csmonitor.com, 25 June 2004; and William Branigan, "Cheney Energy Documents Remain Sealed," 24 June 2004, accessed on the website of the *Washington Post Online*, at http://www.washingtonpost.com, 24 June 2004.

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unanimous ruling signaled a major legal and political victory for the White House, further bolstering the president's power to deliberate and seek advice behind closed doors with industry lobbyists and others without having to disclose details to Congress or the public. Writing for the court, Judge Raymond Randolph said that the "president must be free to seek confidential information from many sources, both inside the government and outside," and noted that the public interest groups failed to show that industry officials were members of the energy task force with voting rights over the administration's recommendations. "The only individuals the President named to the task force were federal officials; only federal officials signed the final report," wrote Judge Randolph. He noted that one of Cheney's deputy assistants for energy policy, Karen Knutson, said in an affidavit that energy industry officials had participated in smaller stakeholder meetings but that they "were simply forums to collect individual views rather than to bring a collective judgment to bear." The unanimous ruling among eight judges who held differing views on the scope of executive powers was unusual for two reasons. First, judges appeared to design their decision with the aim of sending a message that the court "should not be used to settle political scores." Second, the ruling largely rested on accepting as fact the assertions of two senior administration officials—who said that industry members were not task force members—while at the same time prohibiting the opposing side from challenging or questioning their statements. Although administration officials praised the ruling as protecting the constitutional prerogatives of the presidency, David Bookbinder, a lead attorney in the case for the Sierra Club, condemned the decision as a defeat for open government.[84]

CONCLUSION

With an administration that arrived in Washington with an executive-centered agenda and a determination to roll back legislative oversight, the Vice President's victory over the GAO represented the Bush-Cheney administration's most important triumph in reasserting the prerogatives of the presidency. The GAO's defeat came on the heels of the White House's executive order rewriting the rules governing public access to presidential materials and the directive by Attorney General John Ashcroft advising federal agencies to err on the side of caution when complying with the FOIA. These actions, which served to further the administration's aims to conceal its activities with greater secrecy, were initiated before the September 11, 2001 terrorist attacks.

Following the terrorist attacks in New York and Washington, however, the Bush-Cheney White House moved with more alacrity than had perhaps any administration since World War II to orchestrate an even greater

[84] Carol D. Leonnig and Jim VandelHei, "Cheney Wins Court Ruling on Energy Panel Records," *Washington Post*, 11 May 2005.

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concentration of executive power in the White House and to expand the mantle of secrecy surrounding executive branch actions. The White House has accomplished these aims with the frequent acquiescence of lawmakers and judges—despite occasional protests—in fostering a broad assault on the free flow of government information. The Bush administration's instinct has been to disclose as little as possible and search for opportunities with which to reverse legislative oversight. The White House has pursued this secrecy agenda by even further restricting access to information under the FOIA by discouraging disclosure requests when there is any legal basis for doing so, by obstructing disclosure of information to Congress on a range of issues, by removing hundreds of thousands of documents once considered public from government websites, by clamping down on leaks to the press, by giving fewer press conferences, by classifying more government documents as secret, and by authorizing the newly created Department of Homeland Security to create advisory committees exempt from the Federal Advisory Committee Act.[85] Together with the expanded mandates of the federal government's intelligence agencies, these developments signal an unraveling of much of the post-Watergate legislation that Congress passed to curb the enormous abuses of power by the executive branch under former President Nixon. It would appear that Congress has too often succumbed to executive demands on these matters without safeguarding its own obligations to oversee executive actions and to defend, if not promote, the right of the American people to know about the activities of their government. The full extent of this concentration of power in the executive branch, and its ramifications, however, remain to be seen.

[85] See Adam Clymer, "Government Openness at Issue as Bush Holds On to Records," *New York Times*, 3 January 2003; Mark Tapscott, "Too Many Secrets," *Washington Post*, 20 November 2002; Jim Rutenberg, "White House Keeps a Grip on Its News," *New York Times*, 14 October 2002; Charles Lewis, "Freedom of Information Under Attack," The Center for Public Integrity, 26 June 2002, accessed on the website of the Center for Public Integrity at http://www.publicintegrity.org/default.apx, 26 June 2002; Laura Parker, Kevin Johnson, and Toni Locy, "Secure Often Means Secret Post–9/11," *USA Today*, 16 May 2002; Linda Greenhouse, "A Penchant for Secrecy," *New York Times*, 5 May 2002; and John Giuffo, "The FOIA Fight," March/April 2002, accessed on the website of *Columbia Journalism Review Online Report* at www.cjr.org, March/April 2002. For a listing of articles on the Bush administration's penchant for secrecy, see The Freedom of Information Center Website at http://foi.missouri.edu/bushinfopolicies/index.html. Also see Lawyers Committee for Human Rights, "Imbalance of Powers: How Changes to U.S. Law & Policy Since 9/11 Erode Human Rights and Civil Liberties, September 2002–March 2003, 2003. The report is also available online at www.lchr.org, accessed 3 April 2003.

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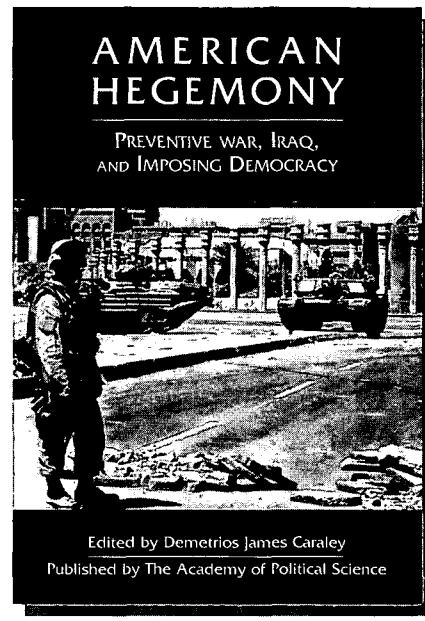
AMERICAN HEGEMONY:
PREVENTIVE WAR, IRAQ, AND IMPOSING DEMOCRACY

Edited by
DEMETRIOS JAMES CARALEY



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In America We (Used to) Trust: U.S. Hegemony and Global Cooperation

ANDREW KYDD

In his State of the Union address in January 2004, President George W. Bush argued that Libya's decision to abandon its quest for weapons of mass destruction was due to the United States invasion of Iraq. As he put it, "Nine months of intense negotiations involving the United States and Great Britain succeeded with Libya, while twelve years of diplomacy with Iraq did not. And one reason is clear: For diplomacy to be effective, words must be credible, and no one can now doubt the word of America." The President was articulating a central tenet of deterrence theory, that threats must be credible if they are to influence the behavior of other states.[1] The United States said that it would invade Iraq if Saddam Hussein remained in power, and when he did, the United States invaded. Other states can now believe that if a similar threat is made in the future, it is likely to be carried out as well. Deterrence theorists view the credibility of this kind of threat as a key foundation of global order. International hegemons like the United States maintain stability by issuing credible threats that those who violate the rules will be punished, and then backing up these threats with action. In the view of the Bush administration, then, the invasion of Iraq reinforced American credibility, and strengthened world order.

Unfortunately, much of the rest of the world took a different view. The inability to find weapons of mass destruction or related manufacturing facilities indicated to many observers that twelve years of sanctions and United Nations inspections, along with U.S. and British military pressure, did effectively disarm Iraq. The evidence on Iraqi weapons programs presented before the war

[1] Thomas C. Schelling, *Arms and Influence* (New Haven, CT: Yale University Press, 1966), 35.

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was thin and did not support the claims being made about them.[2] With the stated reason for going to war now rather than later so dubious, the United States was seen as, at best, trigger happy—exercising poor judgment and prone to violence—or, more sinisterly, acting on interests that it failed to acknowledge: a desire to control oil resources, protect Israel, or even attack Islam in general. Many foreign observers argued that the Bush administration's unilateralism was evidence that the United States was a rogue state, using its military forces in unjustified ways in pursuit of its own interests. In short, the word of America is doubted as never before. This mistrust has led to a failure of international cooperation. If the hegemon cannot be trusted to act deliberately and in the common interest, with due respect for the opinions of others and for international law, other states will refuse to be associated with it. This will deprive the hegemon of material aid and international legitimacy, thereby undermining world order.

Both sides would agree that belief in the word of the United States is crucial to its ability to influence international events and maintain stability. However, each side has a very different view of how this matters, and why. The Bush administration's viewpoint is based on deterrence theory and the theory of public goods. The public goods theory of hegemony argues that hegemons unilaterally produce public goods that other states free ride on. The public good in question is the coercion or deterrence of potential rule breakers in the international system. In this view of hegemony, it is not crucial that most states trust the hegemon, because their cooperation or lack thereof is of negligible importance. What is important is that the potential rule breakers fear the hegemon and find its threats to be credible. This conception of hegemony underlies the Bush administration's emphasis on preventive action against threats, undertaken alone if necessary, as articulated in the 2002 National Security Strategy.[3] The war against Iraq was conceived of as a public good, benefiting all, which the United States provided while others rode free. The United States should be considered more credible post-Iraq; it said it would invade and it did.

An alternative view of hegemony, however, has a very different understanding of the role of credibility. In what can be called the *hegemonic assurance* perspective, hegemons are seen as overcoming multilateral mistrust problems. Many states want to cooperate if they believe that the cooperative endeavor is well designed to achieve a shared goal, and that enough other states will cooperate to ensure success. However, there is always uncertainty about the best way to proceed and about the motivations of other states—some states may try to hijack international efforts to serve their own more narrow

[2] This is the conclusion of the Senate intelligence committee; see U.S. Senate, Select Committee on Intelligence, *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, 108th Cong., 2nd sess. 7 July 2004, 14–15.

[3] George W. Bush, *The National Security Strategy of the United States of America* (Washington DC: The White House, 2002), 13–16.

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interests, whereas others want to free ride or exploit the cooperation of others. Trustworthy hegemons solve these problems by working with other states to identify policies that a majority can support, and then providing assurances that the hegemon and enough other states will cooperate in the common good to make it worthwhile for all the well-disposed states to cooperate. Untrustworthy hegemons would be incapable of fulfilling this role, because they would arouse suspicions of the aims or tactics of the cooperative venture, or of the hegemon's intentions of actually cooperating.

Both perspectives on hegemony have merit, and both are at work in various cases. However, the recent vogue in the United States for the public goods/deterrence theory view of hegemony makes it worthwhile to recall that the hegemonic assurance perspective is essential to understanding how the United States fostered cooperation at crucial junctures in history. A closer examination of both the theory and practice of hegemony is in order. I will first spell out more fully the logic behind the different views of hegemony. Then, I will show how the post-World War II era was marked by severe mistrust problems that the United States helped to overcome through hegemonic assurance. I conclude by discussing the importance of trust under hegemony today.

Alternative Views of Hegemony

Political scientists and economists have long argued that hegemony, defined as the presence of a predominant power, promotes international cooperation. In the nineteenth century, Great Britain presided over a relatively open and cooperative international economic and trading system. In the second half of the twentieth century, the United States took up the reins and facilitated an even more institutionalized and stable system of cooperation in both economic and military affairs. These eras are contrasted with the interwar period and the Great Depression, in which, according to Charles Kindleberger, Great Britain could no longer and the United States would not yet take on the role of stabilizer.[4]

But why does hegemony promote cooperation? The two most common answers are often known as the *benign* and *coercive* theories of hegemony.[5] Benign hegemony is based on the theory of public goods. Public goods, like clean air or radio broadcasts, can be consumed without either paying for them or diminishing anyone else's ability to consume them.[6] Various types of international

[4] Charles Kindleberger, *The World in Depression, 1929–1939* (Berkeley: University of California Press, 1974), 291–292. For other analyses of hegemony in the world economy, see Stephen D. Krasner, "State Power and the Structure of International Trade," *World Politics* 28 (April 1976): 317–347; Robert O. Keohane, *After Hegemony* (Princeton, NJ: Princeton University Press, 1984); and Robert Pahre, *Leading Questions: How Hegemony Affects the International Political Economy* (Ann Arbor: University of Michigan Press, 1999).

[5] Duncan Snidal, "The Limits of Hegemonic Stability Theory," *International Organization* 39 (Autumn 1985): 579–614.

[6] For the theory of public goods, see Richard Cornes and Todd Sandler, *The Theory of Externalities: Public Goods and Club Goods* (Cambridge, UK: Cambridge University Press, 1996).

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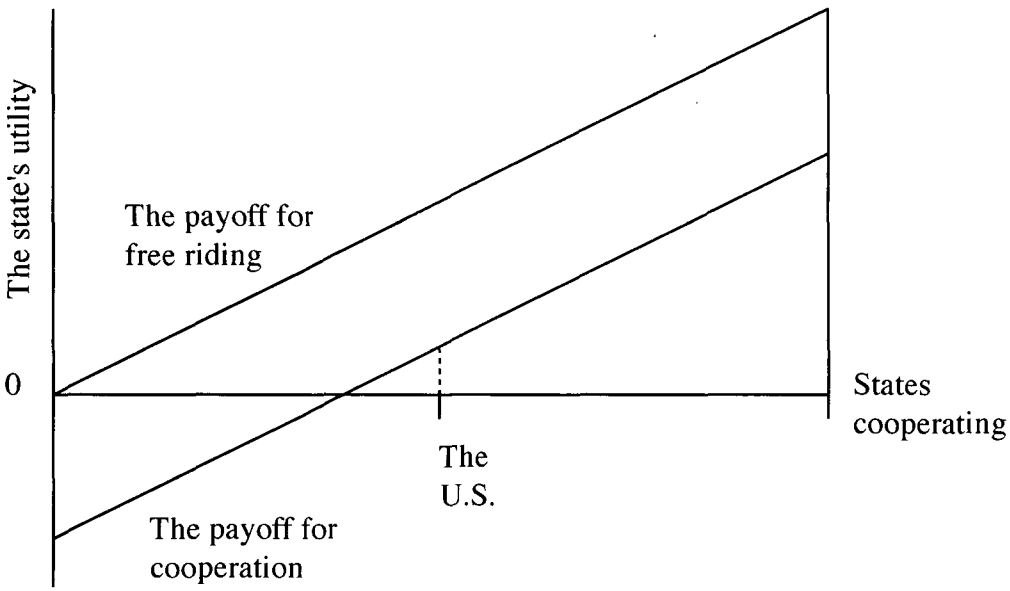
FIGURE 1
The Public Goods Game



In the public goods game, the payoffs for cooperating and free riding both increase with the number of others cooperating, but the payoff for free riding remains above the payoff for cooperation, so states continue to have an incentive to free ride no matter how many others cooperate.

cooperation, such as low tariffs, fixed exchange rates, and collective security systems, are sometimes thought of as analogous to public goods, and the public goods game is invoked to explain why hegemony is needed to produce them. In the public goods game, each state has a chance to cooperate in the production of the public good, or to not cooperate—that is—free ride. The payoff for each choice improves with the number of other players who cooperate, because each state's cooperation benefits all the other states. The greater the number of states who cooperate, the better off everyone is.

The key assumption behind the public goods game is that most states are too small to have a significant impact on how much of the public good is produced. They pay a cost for cooperation, and their cooperation moves the group a little bit closer to full cooperation, but this little bit is too small to outweigh the costs to the individual state. This is reflected in the diagram (Figure 1) by the fact that the payoff for cooperation is always below the payoff for free riding, indicating that states prefer to free ride. The hegemon, in contrast, is large enough to significantly affect the total amount of the good produced. The United States is such a large percentage of the group size that even if it is the only cooperator, its payoff from cooperating may cross the axis and be greater than zero, which would be the payoff if the United States did not cooperate. This impact of size led Mancur Olson to argue that public goods are more likely to be provided when

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there is a large actor to provide them.[7] In international affairs, international public goods are provided when a hegemon exists that finds it worthwhile to provide them unilaterally. Benign hegemony is hegemony as *noblesse oblige*. Trust is unimportant. The hegemon produces the public good because it wants to, and the followers do not condition their behavior on what the hegemon does, because they are free riding. They do not have to trust the hegemon, and the hegemon does not have to trust them.

Benign hegemony explains why the hegemon cooperates, but why do any of the other states cooperate? The theory of coercive hegemony provides an answer. Although the smaller states in the system may prefer to free ride, the hegemon coerces them into cooperating by offering additional incentives or threatening additional costs for noncompliance. This perspective is a favorite of Marxists and realists alike. Revisionist historians of the Cold War portrayed U.S. foreign policy as driven by its economic interests. In this view, domestic elites, eager for export markets and outlets for investment, used American power to force economic openness on an unwilling world and to suppress popular resistance.[8] Realists such as Robert Gilpin have argued that great powers establish international orders to their liking after they prevail in hegemonic wars. These orders serve the security interests of the reigning hegemon at the expense of the lesser powers, until one of them, by dint of economic growth, rises to a position where it can challenge the hegemon in a new great-power war.[9] Coercive hegemony is the Mafioso view of hegemony—hegemony as an offer you cannot refuse. Credibility is important, in the sense envisioned by deterrence theory. The hegemon's threats must be credible, in that the followers believe that if the hegemon makes a threat, it will carry it out. Coercive hegemons enforce their will on reluctant followers and would rather be feared than loved.

The Bush administration's view of hegemony combines ideas from both benign and coercive hegemony. In this view, most states obey the rules of the international system. Some states, however, pose grave threats to American security and to global stability. These states must be deterred or coerced into abandoning their links to terrorism, weapons of mass destruction programs, or general adversarial stance. The United States may have to provide this public good alone, because most states prefer to free ride, but this is the burden of hegemony. What is important is not what the free riders think, because their behavior is inconsequential, but what the potential threats think. They must fear the wrath of the United States.

[7] Mancur Olson, *The Logic of Collective Action* (Cambridge, MA: Harvard University Press, 1965), 28–29. This result does not hold in some more general models of public goods provision; see Pahre, *Leading Questions*, 23.

[8] Joyce Kolko and Gabriel Kolko, *The Limits of Power: The World and United States Foreign Policy, 1945–1954* (New York: Harper and Row, 1972), 2.

[9] Robert Gilpin, *War and Change in World Politics* (Cambridge, UK: Cambridge University Press, 1981), 9–15; and for a similar argument, see Paul Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York: Random House, 1987).

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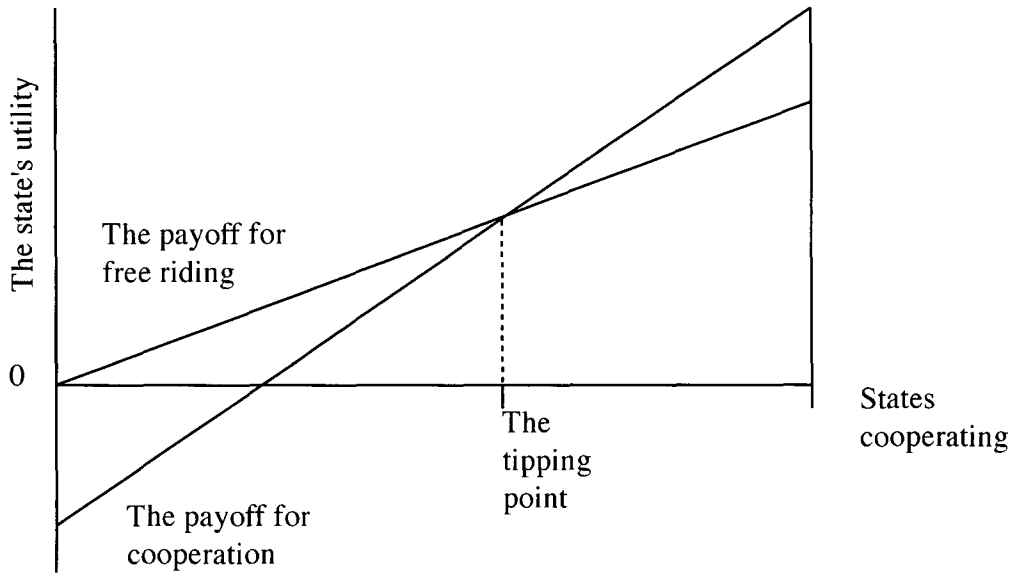
FIGURE 2
The Tipping Game



In the tipping game, the payoffs for cooperating and free riding both increase, but once past the tipping point, states prefer to cooperate rather than free ride. This means if states think that many others will cooperate, they prefer to cooperate as well.

Credibility is conceived of differently in the third view of hegemony, the hegemonic assurance perspective.[10] This view is based on the tipping game.[11] The tipping game is like the public goods game except for one crucial assumption: in the tipping game, the payoff for cooperation eventually exceeds the payoff for free riding if enough others are expected to cooperate. In Figure 2, this is illustrated by the fact that the payoff lines cross and the payoff for cooperation ends up on top. All states think that cooperation is a good idea and would like to cooperate if they could be assured that enough others will as well. Each state fears, however, that not enough other states will cooperate to make their own cooperation worthwhile. In order to cooperate, then, each state needs to be assured that a sufficient number of other states will cooperate to get the group past the "tipping point" where the lines intersect, beyond which everyone prefers to cooperate.

[10] For a fuller exposition of this perspective, see Andrew H. Kydd, *Trust and Mistrust in International Relations* (Princeton, NJ: Princeton University Press, 2005), 142–149.

[11] For an early exposition of the tipping game, see Thomas C. Schelling, *Micromotives and Macrobehavior* (New York: W. W. Norton, 1978), 213–243; and for later applications, see David D. Laitin, "The Tower of Babel as a Coordination Game: Political Linguistics in Ghana," *American Political Science Review* 88 (September 1994): 622–634; and Rasma Karklins and Roger Peterson, "Decision Calculus of Protesters and Regimes: Eastern Europe 1989," *Journal of Politics* 55 (August 1993): 588–614.

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Given that everyone wants to cooperate if everyone else is expected to, one might wonder why cooperation is not more or less automatic in the tipping game. Why would states fail to cooperate if everyone knows that everyone else wants to? One of the most important impediments to cooperation in situations such as the tipping game is mistrust. Mistrust in this context is a fear that other states may secretly prefer to free ride, as in the public goods game, or may be attempting to hijack the cooperative effort of others to serve their own narrow interests. Hegemony promotes cooperation in the face of this kind of mistrust in two ways. First, by engaging in discussions and providing credible information, the hegemon builds a consensus that the parties have a common goal, have identified a workable strategy for attaining it, and face a tipping problem in executing the strategy.[12] Second, by pledging to cooperate, the hegemon helps to get everyone to the tipping point so that they wish to cooperate as well. Given its size, if the United States is willing to cooperate, only a few other states need to cooperate as well to push past the tipping point and get cooperation from the rest of the group. Thus, hegemons are well placed to foster international cooperation by persuading the group that they face a tipping problem and then getting the group past the tipping point so that everyone wants to cooperate.

However, this process only works if the hegemon is trusted by the other states. If the hegemon is seen as trustworthy, the information it provides about the nature of the problem and the appropriate response will be viewed as credible, so that other states will come to see the issue as a tipping problem. The hegemon's intention to cooperate will also be regarded as credible, so other states will be willing to cooperate as well. The hegemon's power is then a boon. By moving the world closer to the tipping point, the hegemon makes it that much easier for the world to cooperate. If the hegemon is untrustworthy, however, it will not only not promote cooperation, it will make other states less likely to cooperate. If the hegemon is untrustworthy, others will doubt the information it provides and question the wisdom of the proposed solution. They will also doubt whether the hegemon will abide by its side of any cooperative arrangements. These concerns will prevent the other states from cooperating. For hegemony to promote cooperation via hegemonic assurance, therefore, the hegemon needs to be trustworthy.

The role of credibility in the hegemonic assurance perspective is therefore very different from that in coercive hegemony. Although each view is important and explains some instances of cooperation under hegemony, the hegemonic assurance perspective has recently been undervalued, and its historical importance is underappreciated.[13] In particular, the greatest achievements of cooperation under hegemony, the founding of the Western bloc that halted Soviet

[12] For an analysis of how information revelation promotes cooperation, see James D. Morrow, "Modeling the Forms of International Cooperation: Distribution vs. Information," *International Organization* 48 (Summer 1994): 387–423.

[13] An exception is G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars* (Princeton, NJ: Princeton University Press, 2001).

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expansionism following the Second World War, and the revival of Germany within that bloc, were primarily products of hegemonic assurance.

Hegemony in Action

The post-World War II decade saw a remarkable series of cooperative endeavors among the European states and between them and the United States. Europe faced several mistrust problems after the war. Germany had proven itself untrustworthy by launching a genocidal war of aggression. Russia was proving itself untrustworthy by closing off Eastern Europe and probing for weakness in the Near East. The United States, although comparatively trustworthy, had abandoned Europe to its fate after the First World War, and Roosevelt had said at Yalta that American troops would remain in Europe for only two years.[14] The growing Soviet threat, however, generated tremendous incentives for the Western states to cooperate, if they could overcome their mutual mistrust. Step by step, the Americans and Europeans managed to do just that. The two great projects of the era were the creation of a prosperous, united Western bloc capable of standing up to the Soviets and the reconstruction of West Germany.

*The Birth of Bizonia**

The revival of West Germany began in 1946, after the victorious allies failed to implement the provisions of the Potsdam accords providing for unified treatment of occupied Germany. The goals of the four occupying powers were difficult to reconcile. The Russians wanted heavy reparations and exclusive control of their zone. The British and Americans wanted to create unified institutions and minimize occupation costs, which implied light reparations only after imports were paid for. France wanted to weaken Germany as much as possible by occupying the Saar and the Rhineland and detaching the industrial heartland of the Ruhr.[15] These conflicting visions of what to do with Germany greatly hampered cooperation in the four-power Allied Control Council

* Bizonia is the name given to the British and American zones of occupation in Germany when they were merged in 1947.

[14] United States Department of State, *Foreign Relations of the United States: The Conferences at Malta and Yalta, 1945* (Washington, DC: U.S. Government Printing Office, 1955), 617.

[15] For an extensive discussion of Potsdam and the issue of treating Germany as a unit, see Mark Trachtenberg, *A Constructed Peace: the Making of the European Settlement, 1945–1963* (Princeton, NJ: Princeton University Press, 1999), 20–33. Trachtenberg argues that Secretary of State James Byrnes agreed to an "amicable divorce" at Potsdam, but the United States and Britain subsequently did push strongly for unified institutions. On French goals, see John W. Young, *France, the Cold War and the Western Alliance 1944–49: French Foreign Policy and Post-war Europe* (Leicester, UK: Leicester University Press, 1990), 25–27, 46–49; and William I. Hitchcock, *France Restored: Cold War Diplomacy and the Quest for Leadership in Europe* (Chapel Hill: University of North Carolina Press, 1998), 43–45.

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(ACC). When the head of the American zone, General Lucius Clay, pushed to set up unified institutions, France and Russia blocked the initiative. In April of 1946, Clay played the reparations card, halting reparations to Russia until unified institutions could be created.[16] The Russians continued to say no.

At the same time, Britain began to consider reviving its zone unilaterally if necessary. The British zone, containing the Ruhr, was not self-sufficient in food, which made it expensive to sustain. Reviving it economically would both reduce occupation costs and prevent the Ruhr from falling under Soviet influence. In July, at the Council of Foreign Ministers (CFM) conference, Britain presented an ultimatum: either the council would agree to set up unified institutions and limit reparations to surpluses after imports were paid for, or Britain would try to revive its own zone. The Russians refused, and U.S. Secretary of State James Byrnes announced his willingness to merge the American zone with anyone who would cooperate in doing so. That fall, the United States and Britain negotiated the merger of their zones, and in January of 1947, Bizonia was born.[17] The French refused to join in, because they feared rather than welcomed German revival, still hoped to play a mediating role between the two superpowers, and still distrusted the American commitment to their security. Byrnes made a speech in Stuttgart in the fall pledging that the United States would keep its troops in Germany as long as any other power, but the French were not sufficiently reassured. As Robert Murphy of the U.S. State Department put it, "French policy is based not simply on the fear of future German aggression but equally, if not more, on the fear that the United States will lose interest, eventually withdraw from Germany, and that some fine morning they will wake up and find themselves face to face with the Russians on the Rhine."[18]

This first step in reviving Germany is poorly explained by benign and coercive hegemony. Benign hegemony has trouble because the British did not free ride, but participated eagerly and even agreed to foot half the bizone's foreign debt.[19] Coercive hegemony fails to explain why France refused to participate when it was so heavily dependent on the United States for economic assistance.[20] Hegemonic assurance better captures British preferences to move ahead with German revival, but only if the United States would too, in order to neutralize potential Soviet opposition, and the French reluctance to participate because of the weakness of U.S. security guarantees.

[16] He also wished to use food aid as leverage with France, but was prevented from doing so; *Foreign Relations of the United States, 1946*, vol. V (Washington DC: U.S. Department of State, 1969), 540.

[17] Anne Deighton, *The Impossible Peace* (Oxford, UK: Clarendon Press, 1990), 93–97; and James McAllister, *No Exit: America and the German Problem, 1943–1954* (Ithaca, NY: Cornell University Press, 2002), 112–116.

[18] *Foreign Relations of the United States, 1946*, vol. V (Washington DC: U.S. Department of State, 1969), 506; Michael Creswell and Mark Trachtenberg, "France and the German Question, 1945–1955," *Journal of Cold War Studies* 5 (Summer 2003): 5–28.

[19] Deighton, *The Impossible Peace,* 110–113.

[20] Irwin M. Wall, *The United States and the Making of Postwar France, 1945–1954* (Cambridge, UK: Cambridge University Press, 1991), 49–62.

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The Origins of the Western Bloc

The Western alliance system began to coalesce in 1947 as a result of both European and American initiatives.[21] Britain and France were the key European players. Since the end of the war, Britain had been a staunch advocate of a strong France, fearing that France would be Britain's only potential ally if the Soviets turned belligerent and the United States retreated once more across the Atlantic. At Yalta, Winston Churchill had secured an occupation zone in Germany for France, as well as a seat on the ACC.[22] The Labor government that came to power in the summer of 1945 favored an alliance with France to contain Germany and resist Soviet domination.[23] Charles De Gaulle, however, attempted to pursue an independent policy by signing an alliance with the Soviet Union in December of 1944 while cooperating (after a fashion) with the United States and Britain in the liberation of France.[24] De Gaulle sought colonial concessions from Britain in Lebanon and Syria, and, above all, sought to weaken Germany.

By 1947, however, De Gaulle was out of power and colonial ambitions in the Levant were abandoned. France began shifting toward the West. In January, Prime Minister Leon Blum visited Britain and proposed an alliance. In March, the treaty was concluded and signed at Dunkirk. The Treaty of Dunkirk was ostensibly directed against German revanchism, but was also implicitly a hedge against Soviet expansionism.[25] As a peacetime alliance with a continental power, Dunkirk represented an unusual commitment for Britain. For France, it was a step toward the West and away from neutrality. This tilt was confirmed at the Moscow CFM conference, when France sided with Britain and the United States against the Soviets on German policy, and subsequently ejected the communists from the cabinet.

The United States took the initiative in the other great step forward of 1947, the Marshall Plan.[26] Marshall aid was designed specifically to address

[21] For overviews of this period, see Trachtenberg, *A Constructed Peace*; John Baylis, *The Diplomacy of Pragmatism: Britain and the Formation of NATO, 1942–1949* (London: Macmillan, 1993); and Hitchcock, *France Restored.*

[22] *Foreign Relations of the United States, The Conferences at Malta and Yalta, 1945* (Washington DC: U.S. Department of State, 1955), 899–900.

[23] John W. Young, *Britain, France and the Unity of Europe 1945–1951* (Leicester, UK: Leicester University Press, 1984), 14.

[24] The French-Soviet alliance earned De Gaulle little respect in Moscow, and Roosevelt viewed him as a prima donna; Wall, *The United States and the Making of Postwar France*, 31. French troops, nominally under U.S. command, participated in the fighting in 1944 and 1945, but almost came to blows with U.S. forces over territorial claims in Italy.

[25] Young, *Britain, France and the Unity of Europe*, 47; Creswell and Trachtenberg, "France and the German Question."

[26] For overviews, see Alan S. Milward, *The Reconstruction of Western Europe: 1945–1951* (Berkeley: The University of California Press, 1984); Robert A. Pollard, *Economic Security and the Origins of the Cold War, 1945–1950* (New York: Columbia University Press, 1985); and Michael J. Hogan, *The Marshall Plan: America, Britain, and the Reconstruction of Western Europe, 1947–1952* (Cambridge, UK: Cambridge University Press, 1987).

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the dollar gap created by European balance-of-payments problems, but more generally, it was intended to raise European morale by signaling U.S. commitment to European recovery. The Marshall Plan is surely the poster child for benign hegemony, given the one-way flow of resources from the United States to Europe. Even in the case of the Marshall Plan, however, the Europeans exercised initiative and thwarted U.S. desires. The Europeans played a major role in drawing up the recovery plans and integrating them through the Organization for European Economic Cooperation. American hopes to use Marshall Plan aid to encourage the development of a European customs union were dashed by the British, ever suspicious of federalizing initiatives.[27]

The events of 1947 support both benign hegemony and hegemonic assurance. The Marshall Plan did represent a public good provided by the United States. However, the aid involved was a small portion of public investment, and conveyed only limited bargaining leverage to the United States.[28] In addition, the first step toward creating a Western alliance system, the Treaty of Dunkirk, was an entirely European initiative, not a U.S. handout or dictate.

The Brussels Pact and the London Accords

In 1948, progress was made on both the reconstruction of Germany and the creation of a Western alliance. Early in the year, Britain proposed a "spiritual union" among the west European powers and asked for U.S. backing. U.S. Secretary of State George Marshall responded that Britain should take the initiative so that Congress could see that the Europeans were able to act together and stand firm against communism. France suggested a system of bilateral pacts based on the Dunkirk Treaty to include the Netherlands and others. Belgium and the Netherlands preferred a multilateral treaty, as did Britain. In March, prodded along by the Czechoslovak coup, Britain and France joined the Benelux nations (Belgium, the Netherlands, and Luxembourg) in the Brussels Pact alliance. The Brussels Pact also was nominally anti-German, yet fully serviceable in an anti-Soviet role.[29] Being multilateral, it could easily be extended to new members, be they European or even North American. Harry Truman expressed U.S. support for the Treaty, and British and American negotiators began to contemplate an alliance structure that might bring the United States in. Once again, the United States preferred to help those who helped themselves rather than provide free rides.[30]

With respect to Germany, as a result of the break with the Soviets, three-power negotiations began on the creation of a West German political entity.

[27] Young, *Britain, France and the Unity of Europe*, 67.

[28] Milward, *The Reconstruction of Western Europe*, 90–125.

[29] John Baylis, "Britain, the Brussels Pact and the Continental Commitment," *International Affairs* 60 (Autumn 1984): 615–629.

[30] Frank Costigliola, *France and the United States: The Cold Alliance Since World War II* (New York: Twayne Publishers, 1992), 70.

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France argued for slow progress toward a weak, decentralized Germany and for international control over the Ruhr. Britain and the United States favored a more-unified state created sooner. Given that the bizonal powers could always threaten to go ahead without France, French leverage was limited. However, France did succeed in obtaining an International Authority for the Ruhr, a Military Security Board to oversee German demilitarization, and a strong role for the German regions in drafting the new constitution. The London Accords, which led to the creation of West Germany, were only accepted by the French Assembly after much reassurance from the British and Americans that France would not be abandoned to face Germany alone, as had been the case after World War I. The most concrete assurance along these lines was the Vandenberg Resolution passed by the U.S. Senate, which signaled U.S. support for the ongoing alliance negotiations.[31]

The Brussels Pact and the London Accords illustrate hegemonic assurance at work. The alliance was a European initiative designed in part to signal their trustworthiness to the United States. The London Accords were made possible by U.S. reassurance of French fears of the revival of Germany. Neither was a free ride for the Europeans, nor were they forced to take these steps against their will, although U.S. leverage was certainly brought to bear against the French, in addition to reassurance.

The North Atlantic Treaty

In 1949, the North Atlantic Treaty was signed, completing the process of alliance building begun at Dunkirk. Again, the initiative came from the British. At the outset of negotiations the previous year, support for a defense pact with Europe had not been unanimous, even within the U.S. State Department, much less in the country as a whole.[32] In the course of the negotiations, the French pushed for military assistance to counter the threat from Russia, dramatized by the Berlin blockade. France also demanded that Italy be admitted to the treaty, and that French Algeria be covered. All of these demands were initially opposed by the United States but ultimately acceded to.[33] The British and French also rejected American proposals to empower the alliance to intervene in cases of "internal aggression" or communist subversion.[34] The United States prevailed on many issues as well, of course. In deference to congressional powers, the security guarantee would not constitute an automatic military commitment. However, the Treaty represented a dramatic break with traditional U.S. isolationism and a strong commitment to European security. At the same time, the Europeans took on increasing defense burdens themselves. British

[31] Timothy P. Ireland, *Creating the Entangling Alliance: The Origins of the North Atlantic Treaty Organization* (Westport, CT: Greenwood Press, 1981), 92–100.

[32] Ibid., 80–82.

[33] Ibid., 100; Young, *France, the Cold War and the Western Alliance,* 215–216.

[34] Costigliola, *France and the United States*, 71.

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military strategy shifted from a policy of abandoning the continent in case of war to one of attempting to defend at the Rhine.[35] Thus, the North Atlantic Treaty Organization (NATO) constituted genuine multilateral cooperation, not a free ride on an American-supplied public good or a product of U.S. coercion.

The building of the Western bloc, culminating in NATO, is therefore poorly explained by benign or coercive hegemony. The United States preferred to help those who helped themselves. U.S. desires were sometimes thwarted, and European initiatives often prevailed, contra coercive hegemony. Instead, hegemonic assurance was at work. Each state wished to cooperate if sufficiently assured that the others would. The Europeans signaled their willingness to defend themselves through the Treaty of Dunkirk and the Brussels Pact, and the United States signaled its commitment to Europe through the Marshall Plan and NATO. Sufficiently reassured, all parties were enabled to cooperate in the common cause of opposing Soviet expansionism. The tipping point had been reached.

Rearming Germany

By 1949, a Western bloc had been created, as had a West German state, but the ultimate relationship between the two was yet to be determined. There were two crucial issues—control over German industry and the Ruhr, and German rearmament.

France still hoped to maintain control over German heavy industry, but knew that the controls established after the war would inevitably fall away with the establishment of a German state. To solve the problem, in 1950, France proposed a supranational body that would have control over the industrial resources of both countries; this became the European Coal and Steel Community (ECSC). Linking France, Germany, Italy, and the Benelux nations, the ECSC launched the process of European unification that led ultimately to today's European Union.[36] Once again, this was a European initiative in response to a mistrust problem, not a free ride or a direct response to U.S. coercion.[37]

The rearmament issue came to the fore after the outbreak of the Korean War in 1950.[38] Fears that the Russians might strike west were exacerbated by loose talk from the East Germans about following the Korean example. Britain and France, along with the Americans, raised their military spending.[39] Military men were already aware that it would be far better to defend Western

[35] Baylis, "Britain, the Brussels Pact and the Continental Commitment"; Saki Dockrill, *Britain's Policy for West German Rearmament 1950-1955* (Cambridge, UK: Cambridge University Press, 1991), 9.

[36] John Gillingham, *Coal, Steel and the Rebirth of Europe, 1945–1955: The Germans and French from Ruhr Conflict to Economic Community* (Cambridge, UK: Cambridge University Press, 1991).

[37] The U.S. was pressing for the reduction of control over German industry, so the ECSC can be considered an indirect response to U.S. pressure, but Germany and Britain were also pressing in this direction, and France's response was on its own initiative.

[38] David Clay Large, *Germans to the Front: West German Rearmament in the Adenauer Era* (Chapel Hill: University of North Carolina Press, 1996), 62–81.

[39] Hitchcock, *France Restored*, 148.

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Europe at the Elbe than at the Rhine, and that it would be throwing away a tremendous asset to fight without German troops. After the North Korean invasion, the United States advanced a plan for sending American troops to Europe and rearming German units to participate alongside NATO. The French resisted and began to cast around for an alternative. With the ECSC as inspiration, France proposed the Pleven Plan for a European Defense Community (EDC) that would command a unified European army.[40] German troops would be raised in small units and fight alongside troops from other nations in mixed formations. This would make use of German manpower without creating independent German military units capable of aggression. The price would be the sacrifice of some degree of sovereignty for France and the other nations entering the Community.

Britain and the United States thought the idea impractical and an attempt to postpone rather than facilitate German rearmament, and the French admitted as much in private.[41] The British rapidly came to the position that they would maintain throughout the EDC debate: they supported it publicly for the continentals but declined to join it themselves. A compromise agenda was worked out in which negotiations would proceed simultaneously on the Pleven Plan and a NATO alternative; meanwhile German troops would be recruited to serve in small units under NATO command. It was Germany who rejected this compromise, in its first sovereign act in conflict with the preferences of its occupiers. Konrad Adenauer, the new German leader, refused to allow German troops to serve as cannon fodder in other countries' armies.[42] Thus, the first act of the German rearmament drama ended in victories for the two weakest actors, France and Germany, over the two strongest, the United States and Britain.

The EDC as eventually signed in 1952 differed substantially from the Pleven Plan. Germany insisted on equal treatment and, over the course of the negotiations, succeeded in eliminating the most discriminatory provisions. As a result, however, the plan lost much of its appeal to the French, who now faced an unwelcome sacrifice of sovereignty in exchange for an equally unwelcome rearmament of Germany. France began pressing the British and Americans to provide guarantees against Germany leaving the community. After a version of such a guarantee was provided, the plan was barely approved by the French cabinet, but it faced increasing popular resistance.

The denouement of the EDC saga was prolonged and dramatic. President Dwight D. Eisenhower and Secretary of State John Foster Dulles soon

[40] Kevin Ruane, *The Rise and Fall of the European Defence Community: Anglo-American Relations and the Crisis of European Defence, 1950–55* (New York: St. Martin's Press, 2000); Spencer Mawby, *Containing Germany: Britain and the Arming of the Federal Republic* (New York: St. Martin's Press, 1999); and Edward Fursdon, *The European Defense Community: A History* (London: MacMillan Press Ltd., 1980).

[41] McAllister, *No Exit*, 194.

[42] Ibid., 199; Large, *Germans to the Front*, 104.

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embraced the EDC, believing it to be the surest road to German rearmament, European unity, and a ticket home for American troops in Europe.[43] For this very reason, the British remained hostile to the EDC and resisted U.S. pressure on them to join. Stalin attempted to scuttle the plan in 1952 by offering a deal on German unification and neutrality, but Germany ratified the treaty anyway after extended constitutional and legislative wrangling.[44]

France continued to agonize over the treaty and to seek additional reassurances from the United States and Britain. Britain went so far as to pledge to contribute one armored division to the EDC, but still refused to join.[45] The United States exerted every pressure on France to ratify, threatening an "agonizing reappraisal" of the U.S. commitment to Europe if France should fail. In the summer of 1954, French Prime Minister Pierre Mendes-France attempted to renegotiate the treaty once more to water down the supranational provisions, but was rebuffed. In August, the French Assembly rejected the treaty and the boldest postwar move toward the dream of European unity was brought to an end.

Britain took the lead in picking up the pieces.[46] Foreign Secretary Anthony Eden made the rounds of the European capitals, pushing for a solution involving the admission of Germany to the Brussels Pact and NATO. Dulles, furious at the French, ultimately allowed himself to be talked around. France objected once more to the lack of safeguards on Germany. To reassure her, Britain went one step further and pledged that British troops would remain on the continent at their current level unless a majority of Brussels Pact nations agreed to a reduction. The NATO solution was ultimately adopted in the Paris Accords of 1954. U.S. and British troops would remain in Germany for the indefinite future. Germany would not have the right to use force to attain reunification, to eject NATO troops, or to develop nuclear weapons, which the British already had and the French were developing. Germany would raise an army that would serve under NATO, that is, American, command. And Germany would be a member of the Western European Union (the expanded Brussels Pact) and NATO.[47]

The rearmament of West Germany accords poorly with benign and coercive hegemony. The British were alongside and sometimes ahead of the Americans in their desire to rearm Germany—they did not need to be coerced or bribed. The French, opposed to German rearmament, managed to postpone it via the EDC episode, and strongly influenced the ultimate form it took, including the extent of security guarantees offered by Britain and the United States. Germany,

[43] McAllister, *No Exit*, 208–215; Large, *Germans to the Front*, 125; Hitchcock, *France Restored*, 155, 173.

[44] For the debate over the "Stalin Note," see Rolf Steininger, *The German Question: The Stalin Note of 1952 and the Problem of Reunification* (New York: Columbia University Press, 1990); Ruud Van Dijk, "The 1952 Stalin Note Debate: Myth or Missed Opportunity for German Unification?" Working Paper #14, *Cold War International History Project*, Washington DC (1996); and John Lewis Gaddis, *We Now Know: Rethinking Cold War History* (Oxford, UK: Clarendon Press, 1997), 127.

[45] Dockrill, *Britain's Policy for West German Rearmament*, 136.

[46] Hitchcock, *France Restored*, 199; Dockrill, *Britain's Policy for West German Rearmament*, 145.

[47] Costigliola, *France and the United States*, 104.

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TABLE 1

*Is the United States More or Less Trustworthy after Iraq?**

	More	*Less*	*Same*	*Don't Know*
United States	58%	29%	6%	7%
Great Britain	24%	58%	12%	6%
France	14%	78%	6%	2%
Germany	10%	82%	5%	3%
Russia	8%	63%	21%	8%
Turkey	8%	74%	11%	7%
Pakistan	5%	64%	7%	24%
Jordan	4%	50%	38%	8%
Morocco	12%	72%	7%	9%

*"As a consequence of the war, do you have more confidence or less confidence that the U.S. is trustworthy?"

Source: The Pew Research Center for the People and the Press, *Pew Global Attitudes Project: Nine Nation Survey* (March 2004), accessed on the Pew website at http://people-press.org/pgap/, 30 August 2004.

weakest of all, also influenced how rearmament would take place, firmly rejecting schemes that would merely utilize German troops as cannon fodder. Instead, hegemonic assurance was at work. Britain and, more reluctantly, France were willing to go along with the United States in rearming West Germany as a result of U.S. security guarantees, provided via NATO and the presence of U.S. (and British) troops in Europe. U.S. power and trustworthiness enabled European fears of German revanchism to be overcome.

Trust and Hegemony Today

Given the importance of hegemonic assurance in the post-World War II period, the growing mistrust of the United States today does not bode well for its ability to continue to foster cooperation. The most recent factor exacerbating this mistrust was, of course, the invasion of Iraq. The extent of the decline in trust is revealed in international public opinion data. In a survey of global attitudes a year after the invasion of Iraq, the Pew Research Center for the People and the Press asked respondents in nine nations, including the United States, whether they had more or less confidence that the United States was trustworthy after the war (Table 1). In America, 58 percent had more confidence that the United States is trustworthy, which indicates that many Americans accept the Bush administration's coercive view of hegemony. In their view, what is important is that the United States carry through on its threats; having done so, the United States is more trustworthy.

Majorities in every other country surveyed have less confidence that the United States is trustworthy, exemplifying the hegemonic assurance perspective. Even in Great Britain, 58 percent have less confidence in U.S. trustworthiness; in Russia, the figure is 63 percent; in Pakistan, 64 percent; and in Germany, a country with some experience in matters of trust and reassurance, 82 percent have less confidence that the United States is trustworthy as a result of the war.

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Other results from the survey are equally indicative of negative attitudes toward the United States. Great Britain is the only country surveyed in which a majority (58 percent) have a favorable opinion of the United States. In France, only 37 percent are favorable, in Germany, 38 percent, in Turkey, 30 percent, in Pakistan, 21 percent; and in Jordan, a mere 5 percent. Large majorities in every country are convinced that the United States takes little account of their interests in making decisions; even for the three NATO allies, the figures are 61 percent in Britain, 84 percent in France, and 69 percent in Germany. Majorities in every country but Britain and the United States believe that reducing terrorism is not the real goal behind the U.S. war against terrorism. Instead, majorities believe that the United States wishes to control Middle East oil, and large percentages think that the United States wishes to harm unfriendly Muslim governments and protect Israel. Most striking, in light of the Soviet experience in the Cold War, the percentage thinking that the United States wishes to "dominate the world" is 53 percent in France, 47 percent in Germany, 44 percent in Russia, 61 percent in Turkey, 55 percent in Pakistan, 61 percent in Jordan, and 60 percent in Morocco. This is approximately where U.S. public opinion about the Soviet Union stood in early 1946, after the imposition of the iron curtain in eastern Europe.

This decline in trust is one of the most serious problems the United States faces in its efforts to protect itself against terrorism. Those believing suicide bombings against Westerners in Iraq were justified ranged from 31 percent in Turkey to 46 percent in Pakistan, 70 percent in Jordan, and 66 percent in Morocco. Even more chilling, 65 percent percent of Pakistanis expressed a favorable opinion of Osama bin Laden, along with 55 percent of Jordanians and 45 percent of Moroccans. This climate of opinion gives terrorists an ocean in which to swim, an ocean that cannot be entirely drained through force directed at easily vanquished states. The fate of the Taliban will naturally make most governments reluctant to openly embrace al Qaeda and provide large-scale training facilities and safe havens. But in the many grey areas of the world where state sovereignty is limited, committed, well-funded, and armed groups can thrive. An anti-American stance can give such groups a populist appeal that will attract money and recruits, and secure protection from sympathetic officials.

The United States needs to remember, therefore, that there are two ways in which credibility is necessary for leadership. It is true that the United States must be firm against hostile states and that any threat it chooses to make must be credible. However, it is also crucial that the word of the United States be credible to its friends and allies. They must know that the United States will not mislead them or act contrary to their interests by engaging in needless or counterproductive conflict. Trust between allies is as important as deterrence of foes. After the Second World War, the Europeans and the Americans managed to overcome their mistrust and create lasting cooperative institutions. This would not have happened if the Americans had thought that the Europeans were mere free riders, or if the Europeans had thought that the Americans would

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abandon them as they had after World War I or lead them into an unnecessary war with the Soviet Union. Today, mistrust is again threatening to prevent cooperation against common threats, and the degree of cooperation achievable will depend on whether a better balance between the two understandings of trust under hegemony can be found.*

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The Impact of Campaign Reform on Political Discourse

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At a time when much of the world is turning to democracy, it is ironic that Americans are dissatisfied with the quality of their own political contests. Politicians are accused of adopting uncivil styles of discourse. Consultants are charged with engaging in manipulative and/or deceptive behavior. Observers say that candidates are striking any detailed form of substance from their campaign appeals. Voters complain that political campaigns have become overly negative and not very informative.[1] According to a 1999 Institute for Global Ethics study, 80 percent of voters believe that attack campaigning "is unethical, undermines democracy, lowers voter turnout, and produces less-ethical public officials."[2]

Given the dissatisfaction that exists regarding American campaigns, a broad range of lobbying organizations have pushed for improvements in how races are conducted. Reform groups such as Common Cause, the Alliance for Better Campaigns, the Institute for Global Ethics, and the Project for Excellence in Journalism have developed ideas such as having more debates and issue forums, providing training schools for consultants and journalists, and

[1] Bruce Buchanan, *Renewing Presidential Politics* (Lanham, MD: Rowman and Littlefield, 1996).
[2] Institute for Global Ethics, "Poll Shows Voters Want Greater Civility, Ethical Behavior in Campaigns," press release, 15 December 1999.

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strengthening ethical standards that they believe will improve the process. Foundations such as the Pew Charitable Trusts, the Markle Foundation, and the Ford Foundation have commited millions of dollars to investigating whether consultant self-regulation and formal accreditation and certification programs for campaign consultants will strengthen campaigns.[3]

Despite the importance of these efforts, few research projects have engaged in systematic evaluation of the impact of campaign reform on political discourse. In this article, we evaluate several suggestions that have been made to improve electioneering in the United States. Using data drawn from a content analysis of news, television, and radio advertisements, debates, campaign literature, mailings, and other forms of communication in competitive House and Senate races during the 2002 elections, as well as a direct comparison of campaign conduct "pledge" and "nonpledge" districts, we argue that although individual reform efforts have achieved some of their objectives, the overall effect has not been substantial. There is little indication that reforms such as improvements in news coverage, pledges to avoid ad negativity, or candidates signing voluntary codes of conduct have been effective in improving campaign discourse.

Campaign Reform and Discourse

Scholars have devoted considerable attention to looking at how institutional changes affect the electoral process. Writers such as Nelson Polsby have studied the history of party reform in an effort to see how new requirements affect overall performance.[4] Individuals such as Larry Sabato and Glenn Simpson have looked at election reform to determine how rules changes alter candidate selection.[5] Campaign finance scholars such as Michael Malbin have studied whether fund-raising shifts improve the fairness and competitiveness of election campaigns.[6]

But relatively little attention has been given to how electoral reform affects the quality of campaign discourse. In past work, there has been greater emphasis on how reform affects candidate strategies and election outcomes than on campaign quality. Far less examination has taken place of what campaign quality is and how it is affected by various types of changes.

Part of the problem has been the difficulty of defining campaign quality and effective discourse. There are no widely accepted models of effective discourse and quality campaigns.[7] Some researchers focus more on the problem of poor-quality information provided by media reporters, whereas others emphasize issues posed by deception and manipulation by candidates. Still

[3] Thomas Mann, "Linking Knowledge and Action: Political Science and Campaign Finance Reform," *Perspectives on Politics* 1 (March 2003): 69–84.

[4] Nelson Polsby, *Consequences of Party Reform* (New York: Oxford University Press, 1983).

[5] Larry Sabato and Glenn Simpson, *Dirty Little Secrets* (New York: Times Books, 1996).

[6] Michael Malbin, *Life After Reform* (Lanham, MD: Rowman and Littlefield, 2003).

[7] Thomas Patterson, *The Vanishing Voter* (New York: Knopf, 2002).

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others point out the power of special-interest groups in skewing campaign discourse, whereas other scholars complain that voters are not engaged in the political process and are not very informed about their campaign choices. Certainly, many observers are concerned over the lack of civility in the ways in which candidates communicate with and about each other.

In addition, there is disagreement over how deleterious particular discourse problems are.[8] For example, some writers complain that "negative" advertising depresses voter interest and engagement although others dispute those results. Some authors view reporters as playing a legitimate role in policing ads and serving as referees for campaign discourse, although others believe that journalists are ill-equipped to engage in that type of oversight.

Even democratic theorists are not in agreement as to how much information voters require in order to make informed electoral choices. In his landmark book on democracy, Robert Dahl specified five criteria for a democratic process: effective participation, voting equality, enlightened understanding, agenda control, and adult inclusiveness.[9] For a nation to be democratic, he argued, it must satisfy every one of those standards. However, V. O. Key suggested a reward/punishment approach that requires far less voter knowledge.[10] According to his formulation, if citizens are satisfied with the performance of the administration, they should vote for members of that administration's party, whereas if they are dissatisfied, they should punish it by voting against its members. Key's model requires only minimal information on the part of the public. Citizens are not required to follow policy debates or know much about the details of a candidate's platform. Rather, they simply must be able to judge what the parties are doing and the degree to which the administration is providing satisfactory or unsatisfactory performance.

In spite of the scholarly divisions that exist, there is a widely shared belief among reform organizations that high-quality voter information and civil discourse are vital to democratic elections. In the view of a number of leading foundations, think tanks, advocacy groups, and academic scholars, elections that are uninformative, overly negative, or deceptive do not help voters choose candidates. These organizations have spent millions of dollars mobilizing support for rules changes, behavior modifications, and shifts in informal norms and expectations. A number of groups have sought to promote new avenues for discussion, such as candidate debates, issue forums, and town meetings, that give candidates more time to promulgate their policy views. They also have supported "enlightened self-interest" on the part of campaign participants in hopes that industry self-regulation will improve campaign conduct and discourse. Among the specific ideas developed in this regard have been organizing

[8] Ken Goldstein and Paul Freedman, "Measuring Media Exposure and the Effects of Negative Campaign Advertising," *American Journal of Political Science* 43 (October 1999): 1189–1208.

[9] Robert Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989).

[10] V. O. Key, *The Responsible Electorate* (Cambridge, MA: Harvard University Press, 1966).

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regularized debates with model formats, convincing candidates to adopt voluntary codes of conduct, and designing an enforceable code of ethics for consultants. But it is not clear how far these proposals have gone toward improving campaign discourse in congressional races.

Data and Methods

To look at the relationship between campaign reform and discourse, we undertook an extensive content analysis of campaign communications in the most competitive 2002 House and Senate races. This included 22 U.S. House districts (Arizona 1, Colorado 7, Connecticut 2 and 5, Florida 22, Illinois 19, Indiana 2, Kansas 3, Maryland 8, Maine 2, Minnesota 2, Mississippi 3, North Carolina 8, New Hampshire 1, New Mexico 2, Nevada 3, Ohio 3 and 17, Pennsylvania 17, Texas 23, Utah 2, and Washington 2) and five U.S. Senate races (Maine, Minnesota, North Carolina, New Hampshire, and Texas).

The research on which this article is based was part of an evaluative effort by one of the reform agencies seeking to determine the impact of their efforts. We focused on 2002 because it was an off-year congressional race with important political stakes. Control of the House and Senate was at stake, and each party undertook a concerted effort to win control of Congress. Legislative races have engendered many complaints about nasty rhetoric, weak media coverage, and attack politics. Therefore, they constitute a meaningful vehicle for evaluating campaign reform efforts.

We investigated the most-competitive House and Senate races, because it is in these that unfair campaign practices are thought to be of greatest concern. Competitive races not only determine who controls Congress but also are the venues in which candidates have the greatest incentives to engage in uncivil tactics or to attempt to mislead voters in order to win a close race. Most congressional contests are not very competitive. Indeed, 99 percent of the incumbents seeking reelection in 2002 won (not counting those paired against other incumbents because of redistricting). The average winning percentage was 69 percent of the vote. Eighty-two percent of congressional races were decided by margins of more than 20 percentage points.

To judge competitiveness in House and Senate campaigns, we relied on assessments reported in the *Cook Political Report*, the *Rothenberg Political Report*, and the *Rhodes Cook Letter*, and the views of an advisory board of distinguished consultants chaired by Peter Hart and the late Robert Teeter. We chose our sample to include the most-competitive districts of the 2002 election. We made sure we had some open-seat races, some contests in which incumbents were competitively challenged, and some in which two incumbents ran against each other because of redistricting. Although a few of the races that we selected did not end up as competitive as expected, they were all contested, during most of the campaign season, as if they would be very competitive. In addition, our sample included nearly all of the races that were, in fact, close.

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For our content analysis, in each district, we hired political scientists with expertise in campaigns and elections. Each scholar used detailed coding protocols developed by the authors for the assessment of communications content during the general election (15 August to 5 November 2002). The protocols were pretested by a subset of the scholars during the period before analysis began; intercoder assessments were evaluated for validity and reliability during the pretest period and throughout the analysis. These experts were asked to code the tone of campaign communications, the extent of negativity, the substantive content of each message, and the quality of news, debates, and advertising on a number of different criteria. This detailed assessment of campaign communications produced a data set containing the content analysis of 1,264 individual campaign advertisements (an average of 38 ads per House race and 55 per Senate contest), 39 debates, 625 newspaper or television stories, and hundreds of mailings and pieces of campaign literature during the 2002 general election.

We also employed a research design in which we compared campaign discourse in twenty-seven of the most-competitive congressional races in 2002. In five contests, candidates signed a voluntary code-of-conduct pledge developed by the Institute for Global Ethics, whereas in twenty-two, there were no formal pledges to avoid negative, misleading, or deceptive campaign appeals. Using our content analysis of ads, news, debates, and other forms of political communication, we evaluated whether campaigns in which this particular reform was adopted featured discourse that was more positive, more substantive, and less biased.

The Visibility of Campaign Reform

The first question we addressed was the visibility of campaign reform in competitive House and Senate elections. We commissioned two telephone surveys designed to measure the visibility of reform. Right after the election, Peter Hart and the late Robert Teeter undertook a national survey of 197 campaign consultants active in the most-competitive 2002 House and Senate campaigns and a national survey of 642 American voters. The consultant survey was conducted 6–25 November 2002 and had a margin of error of plus or minus seven percentage points. The voter survey was undertaken 8–11 November 2002 with a margin of error of plus or minus five percentage points.

On the basis of these surveys, we found that some reforms were more visible than others. For example, 91 percent of consultants said that there were formal candidate debates in the House and Senate campaign in which they participated, whereas 82 percent indicated that there were issue forums in which both candidates appeared. Fewer consultants, however, indicated that their own races had pledges to avoid negativity or specific conduct code pledges. Indeed, in only 29 percent of these competitive districts did candidates pledge to avoid negative campaigning, and in only 25 percent did the candidates agree

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to specific conduct codes of avoiding negative, misleading, or deceptive campaigning. Thirty-three percent of consultants indicated that they had heard of the Institute for Global Ethics effort to get candidates to sign voluntary code-of-conduct pledges.

In contrast, voters saw fewer examples of reform activities, such as debates and issues forums, than were reported by political consultants. Forty-six percent of voters said that there were debates in their congressional districts, compared to 91 percent of consultants. Only 44 percent of voters said that their districts had issue forums, compared to 82 percent of consultants. The numbers reported regarding candidate pledges, however, were similar. Twenty-nine percent of consultants said that one of the candidates had taken a pledge to avoid negative campaigning, about the same as observed by voters. And, similar to voters, 25 percent of consultants indicated that at least one of the candidates had agreed to abide by a specific code of campaign conduct.

In general, reforms that were simple to observe and generated media attention (such as debates and forums) tended to be more visible than others (such as candidate pledges) that required greater voter attentiveness to the political process. If there was media attention to a reform, voters were much more aware of it being undertaken in their local race.

Measures of Candidate Discourse

We also looked at the actual discourse in competitive House and Senate races during the 2002 election: ads, news, debates, and other forms of political communication. Our assessment of candidate discourse followed from several qualities of effective elections that are widely accepted by reform advocacy organizations. Leaders in reform organizations believe that electoral discourse should be substantive, unbiased, not overly negative, and not misleading or deceptive.

The rationale for these standards, from their perspective, is that if voters have a choice, they must understand that choice. That is to say, the substance of campaign discourse must make clear to the voters what distinguishes one candidate from another on the basis of experience, past record, proven ability, positions on the issues, the ability to accomplish goals, and a number of other relevant factors. Candidates need to convey this information to voters in a way that gets through to them and is not too shrill, because those types of tactics turn off many voters and discourage them from participating in the electoral process. Discourse that is biased, misleading, deceptive, or unfair undermines the voters' efforts at holding leaders accountable and representing citizen interests in the political process.[11]

To examine candidate discourse, we sought two kinds of evidence related to content and tone. First, we looked for the degree of substance in candidate messages. Citizens should have the opportunity to know where candidates

[11] Richard Fenno, *Home Style* (Boston: Little, Brown, 1978).

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stand on the issues, what qualifications they would bring to the office, how they would represent the district—each of these in concrete terms, not in meaningless platitudes. Second, following the lead of reform organizations, we were concerned about the civility and tone of discourse. In looking for civility, we were acutely aware of the need for precise definitions. Candidates have become quite adept at crying "Foul" when opponents use negative tactics against them. The media often pick up on these claims. However, contrasting one's record with that of one's opponent is a perfectly legitimate tactic for drawing exactly the type of distinction that citizens need to see in order to cast informed votes. Contrast or comparison ads are not necessarily negative, particularly if they are done with subtlety.

In our analysis, we distinguished among positive ads (in which a candidate sought support by emphasizing his or her own positive qualities or record), comparison or contrast advertising (in which a candidate explicitly compared his or her record with that of the opponent), and negative advertising (in which the clear goal of the candidate was to paint an unflattering picture of the opponent, without comparison to the person mounting the campaign). Substantive campaigns often involved comparing a candidate's record with that of his/her opponent; campaigns crossed a line when the comparative aspect was lost and the goal was clearly to influence citizens to vote against the opponent.

Reviewing the competitive campaigns that we studied, we found that the candidates' own political communication frequently did not meet the criteria essential for effective democratic elections. Fully 40 percent of paid media was judged by our academic experts to be low in content, 26 percent was rated as being very biased, and 31 percent was considered to be strongly negative. Ads sponsored by surrogate organizations were rated as more substantive, but also more biased. For instance, commercials broadcast by candidates themselves featured less "high" issue content (29 percent) compared to those run by noncandidate organizations such as political parties or interest groups (36 percent). But noncandidate communications also were coded by our academic experts in each district as more than twice as biased (36 versus 17 percent) and twice as negative (45 versus 17 percent).

There were also distinctions in discourse quality based on the type of communications devices used by candidates and their campaigns. In particular, we compared television ads, radio ads, direct mail, telephone calls, and campaign literature on the dimensions of issue content, bias, negativity, and specificity. Direct mail had the highest issue content (41 percent in the highest category) and made the most-specific issue statements (14 percent in the highest category). The emphasis on issues in this medium follows from the campaigns' abilities to narrowcast the message to a receptive audience. Television advertising, which reaches the broadest audience, was significantly lower in both categories (27 percent and 10 percent, respectively) (see Table 1).

Radio ads tended to be particularly negative. Fifty percent of radio ads, 36 percent of television ads, and 35 percent of telephone calls were judged to be

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TABLE 1

Percentage of Paid Campaign Communications Possessing Various Characteristics, by Medium

	Campaign Literature	*Direct Mail*	*Radio Ads*	*Television Ads*	*Telephone Call*
High Issue Content***	24%	41%	21%	27%	20%
Biased Issue Presentation*	25%	28%	35%	25%	19%
Negative Tone***	6%	28%	50%	36%	35%
Relevant Character Information*	19%	20%	24%	17%	3%
Clear Statements on Issues***	6%	14%	6%	10%	3%

For differences between categories, $^{*}p \leq .05$, $^{**}p \leq .01$, $^{***}p \leq .001$.
Source: Candidate Advertisement Dataset.

negative, compared to just 6 percent of campaign literature. More than a quarter of all of the advertisements analyzed mentioned that the opponent did not share the values of the district (28 percent); only slightly fewer claimed that the opponent was dishonest (23 percent) or uncaring (17 percent). Far fewer ads used character traits related to job performance. Only 7 percent said that the opponent was not a strong leader, and 3 percent that he or she was inexperienced.

If the substantive level of campaign discourse is to be raised, one would hope that the appeals made for voter support would be based on what the public needs to know about a candidate going into the voting booth, rather than on emotions. Yet, in our analysis, only 29 percent of the advertisements observed fell into the highest categories of cognitive appeal, whereas 43 percent were categorized as based largely on emotional appeal.

In terms of factual accuracy, our observers found that nearly all of the advertisements analyzed (98 percent) met minimum tests of accuracy. However, technical accuracy does not necessarily give citizens the information needed to cast informed votes. Nearly a quarter of the advertisements observed were felt to be misleading (23 percent), and more than half failed to provide an adequate context for evaluating the facts presented (56 percent). Only 10 percent of the observations were characterized as having provided an accurate context.

The conclusion from these data is inescapable. In the media that campaigns produce and pay for themselves, they do not give the public the kind of substantive information needed to cast informed votes. And appeals sponsored by surrogate organizations, such as parties, groups, or individuals, tend to be more vague, negative, biased, and misleading. Because surrogates play a role different from that of the campaigns themselves, reforms aimed only at candidates' campaigns will not be effective. Rather, reformers must focus on the broad array of organizations (candidates, parties, groups, and individuals) and the diverse types of tactics (ads, direct mail, leafleting, and phone calls) used to communicate with voters. Indeed, with the adoption of the McCain-Feingold campaign

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finance legislation, surrogates in future races will face tougher disclosure rules for campaign activities in the closing weeks of a race, particularly with regard to advertising tactics aimed at broad audiences of voters.

Judging News Coverage

News reporting can enhance the substantive content of information reaching citizens. It can add issue information to the discussion, it can be used to call into account those who run misleading campaigns, and it can be employed to contrast the backgrounds and values of the candidates. In any number of ways, an alert, attentive, and concerned media could enhance the level of political discourse in election campaigns. However, we find almost no evidence that this was the case in the House or Senate elections of 2002.

One of the most frequent complaints about campaign advertisements is that little can be said in a thirty-second ad. News stories can be longer, but does this greater length permit more depth? We do not find evidence that gives much hope in this regard. Nearly 65 percent of the television news stories were one minute in length or less; over 62 percent of the newspaper stories were of fewer than 500 words.

A frequent criticism of news coverage is that the reports address only the campaigns themselves, not substantive issues. We found that this was still the case in 2002. Nearly two-thirds of the more than 600 stories coded dealt mainly with the campaign. Indeed, nearly 90 percent of the television reports—almost all of which appeared late in the electoral season—dealt with the "horse race" and campaign strategy. In contrast only about one in six stories dealt with policy issues. Only one-tenth dealt with the performance of incumbents in office. When our observers were asked to evaluate the quality of the news coverage provided in individual stories, only 8 percent coded them as falling into the highest category, "coverage provides ample information"; 28 percent felt that the story fell into the lowest category, "coverage lacks appropriate information."

In looking at the specific details of coverage, nearly three-quarters of the stories provided little or no information on candidate issue positions; nearly seven out of eight did not discuss the candidates' past records in any depth; and over 90 percent failed to go into detail on candidate qualifications or relevant personal characteristics. That is, the coverage was short, campaign oriented, not issue oriented, and generally not helpful in providing information about either candidate.

To investigate the type of coverage received, we asked observers to code the depth of issue coverage of the stories they were analyzing. The scale in this case went from "very little contextual information or discussion" to a "great deal of information about policy problems and proposed solutions"; 52 percent of the stories were coded in the lowest categories, showing lack of depth in the coverage, whereas only 16 percent were in the top categories.

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TABLE 2

Summary Evaluations of Campaign News Coverage

	Overall Quality of Coverage	*Depth of Issue Coverage*	*Character Coverage*
Low	54%	61%	37%
Moderate	21%	19%	28%
High	25%	19%	36%
	N = 625	N = 519	N = 323

Source: Single News Story Dataset. Percentages may not sum to 100 because of rounding.

Finally, we asked for an overall assessment of the quality of the stories on three criteria—overall quality of the coverage, depth of the issue coverage, and relevance of the character information provided in the story (see Table 2). The stories were rated overwhelmingly low on the overall quality of the coverage and on the depth of issue coverage. The ratings on the relevance of character coverage were more balanced, but most stories did not present character coverage at all.

One of the participants in a campaign professionals focus group that we conducted summed up his feelings about the media in this way: "I really agree that the quality of reporting on campaigns is so poor these days that if you want to get better ... campaigns, [you need] better writing and reporting on campaigns at the local level. President, presidential level, it's fine. Local level, it's awful." None of the other participants disagreed. The conclusion that citizens are not getting the information from the electronic media that they need if they are to make rational decisions on congressional and senatorial elections appears beyond doubt. Of the twenty-seven detailed case studies we undertook (twenty-two House races and five Senate contests), our local experts concluded that only two media markets covered the policy issues well. In a minority of markets, therefore, it may be possible to become adequately informed from the print media, but this requires considerable citizen effort.

The Impact of Voluntary Codes of Conduct: The Case of the Institute for Global Ethics

In 2000 and 2002, the Institute for Global Ethics (IGE) sought to improve campaign discourse by having candidates sign voluntary codes of conduct pledging to run "clean" campaigns. To see if these pledges had any impact, we examined discourse differences between the campaigns that were run in five contests in which candidates signed codes of conduct and twenty-two elections in which they did not. IGE is a national reform organization financed by major foundations that has made a concerted effort to get congressional candidates to sign voluntary codes of conduct in which they pledge not to run negative ads or engage in deceptive or misleading styles of appeals. This organization obtained signed codes of conduct in three races in 2002 (the second congressional district in Maine, the Maine U.S. Senate race, and the third

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TABLE 3

Summary of Paid Media Content for IGE and Non-IGE Districts

	Issue Content		*Bias*		*Tone*	
	IGE	*Non-IGE*	*IGE*	*Non-IGE*	*IGE*	*Non-IGE*
1–Low/Extreme Bias/Strong Negative	19%	18%	2%	11%	15%	22%
2	12%	23%	9%	18%	5%	10%
3–Medium/Some Bias/Mixed	23%	29%	34%	32%	18%	16%
4	32%	21%	33%	26%	19%	15%
5–High/No Bias/Strong Positive	14%	9%	22%	14%	43%	37%
N	171	1,067	166	1,027	175	1,069
Kendall's tau-*c*	.073**		.116***		.061**	

*$p \leq .05$, **$p \leq .01$, ***$p \leq .001$.

Source: Candidate Advertisement Dataset. IGE districts are ME-2, OH-3, OH-17, WA-2, and ME Senate.

congressional district in Ohio) and two in 2000 (the seventeenth district of Ohio and the second district in Washington). We included the two districts from 2000 with the idea that if the reform effort is to be successful, there should be a carryover effect from year to year.

We make no claims that these five races are representative in any sense. For example, the two Maine races took place in a state with a tradition of clean campaigns. As early as 1982, two U.S. Senate candidates, George Mitchell (D), then serving as an appointed senator and seeking reelection, and David Emery (R), then a congressman seeking to move to the Senate, jointly urged outsiders not to come into the state with negative advertising because it was not in the Maine tradition. Maine candidates had signed voluntary codes for three election cycles prior to this one. The race in second district in Washington developed as one of the least competitive of the campaigns we had predicted to be competitive, in part, at least, because the challenger did not mount an effective challenge. The two Ohio races were for open seats. In Ohio 3, the Democrat did not come as close to holding what had been a Democratic seat as analysts had predicted. In Ohio 17, the seat vacated by the convicted James Traficant, both candidates wanted to demonstrate that they were different from Traficant and thus avoid any kind of negative association.

With those caveats, we compared IGE and non-IGE districts on three discourse dimensions: issue content, bias, and tone (see Table 3). Our goal was to see whether the IGE districts featured "better" discourse, according to the standards employed by reform organizations. In general, districts in which the IGE obtained signed conduct pledges had a higher issue content, were perceived to be less biased, and had a more positive tone than did the non-IGE campaigns, and these differences were statistically significant.

Although these data show encouraging signs regarding the impact of reform, the low levels of association imply that claims regarding significant improvement are not very strong. When one combines this finding with IGE's inability to have voluntary codes of conduct signed in many congressional

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districts, one has to be skeptical of systematic impact. For the vast majority of the country, this reform was not implemented in any formal way. For that reason, it is hard to judge this specific reform as being very successful, because so few congressional candidates agreed to its provisions.

An Assessment of Ad Discourse

The final issue that we analyzed was that of the factors that affect campaign discourse. Using our dataset of 1,264 individual campaign ads, we undertook a multivariate analysis of the determinants of advertising discourse. We employed dependent variables measuring three modes of discourse (issue content, campaign tone, and issue bias). For our independent variables, we looked at a variety of forces thought to be important in elections and thereby relevant for campaign discourse. Among the independent variables that we examined were the party of the candidate, whether the race was an open-seat election, whether a candidate or noncandidate sponsored the communication, whether the candidate personally appeared in the communication, and whether the appeal relied upon emotion or cognition.

The three dependent variables (advertisement tone, issue content, and issue bias) were coded on five-point scales, with 1 representing the least-desirable trait in a campaign communication (for example, strongly negative tone, low issue content, and extreme levels of bias) and 5 representing the most-desirable trait (for example, strongly positive tone, high issue content, and no bias). For the independent variables, candidate party was coded 1 for Democrat and 0 if otherwise. An open-seat race was coded 1 if an open-seat race and 0 if otherwise. A candidate-sponsored communication was coded 1 if candidate-sponsored and 0 if otherwise. Whether the candidate appeared personally in the ad was coded 1 for a personal appearance and 0 if otherwise. Levels of emotional and cognitive appeals were coded on a five-point scale, with 1 representing none of that type of appeal and 5 representing strong appeals of an emotional or cognitive nature. In all cases, a positive coefficient indicates that the independent variable produces movement in a positive direction for the dependent variable, and a negative coefficient indicates that the independent variable produces movement in a negative direction for the dependent variable.

Table 4 shows that there were several factors that contributed to negative ad tones. These were the advertisement not being sponsored by the candidate's own organization (that is, advertisements sponsored by party committees or other interest groups), the candidate not appearing personally in the advertisement, the advertisement making a highly emotional appeal, and the advertisement having been run on behalf of a Democratic candidate. The last factor relates, we assume, to the fact that the Democrats were the party in opposition, and therefore in a position in which they employed hard-hitting messages.

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TABLE 4

Impact of Specific Paid Campaign Communications Characteristics on Communication Tone, Issue Content, and Issue Bias

	Ad Tone	*Issue Content*	*Issue Bias*
Candidate Party	−.20 (.08)**	.25 (.06)***	.29 (.06)***
Open-Seat Race	−.08 (.08)	−.22 (.06)***	−.02 (.06)
Candidate Communication	.43 (.08)***	−.36 (.06)***	.24 (.06)***
Candidate Appears Personally	1.53 (.09)***	.20 (.07)**	.70 (.07)***
Level of Emotional Appeals	−.37 (.03)***	.05 (.03)	−.29 (.03)***
Level of Cognitive Appeals	−.08 (.04)*	.69 (.03)***	.10 (.03)**
Constant	3.71 (.22)***	.73 (.17)***	3.14 (.19)***
N	1199	1194	1153
Adjusted R^2	.37	.37	.30

*$p \leq .05$, **$p \leq .01$, ***$p \leq .001$.

Source: Candidate Advertisement Dataset. The numbers presented in this table are unstandardized ordinary least squares regression coefficients, with standard errors in parentheses.

These findings are particularly important for a reform agenda. The results argue, essentially, that reformers cannot concentrate on candidates and their campaigns, because the candidate organizations are not the worst offenders. It appears quite likely that candidate organizations take the high road for strategic reasons. If surrogates run the negative campaigns, the candidates themselves can appear to be above the fray while the negative message still gets out. As one of our focus group participants put it, "The third parties are doing the dirty work, and they're integrated. I mean, they're coordinated, although there are legal issues with some of that, but it allows the candidates to kind of emerge on the high ground while the third parties do the bad work."

Not "going negative" in advertisements in which the candidate appears personally follows from the same strategic thinking. If one goal of reform is to decrease the negative content of campaign discourse, effective means become apparent. Candidates should be encouraged to convey their own messages, both in the sense of sponsoring advertisements and delivering those messages in person. This principle, a key tenet of the McCain-Feingold campaign finance reform legislation, is supported by our analysis.

Factors linked to high issue content of advertisements included party, being an open-seat election, being candidate sponsored, and relying extensively on cognitive appeals. In our analysis, Democrats ran more issue-oriented and cognitive-based advertisements because they were questioning the party in power. Open-seat races tend to be more issue oriented because, in these races, candidates who are less well known, by and large, than the incumbents are trying to convey an impression of who they are and why they deserve support. Again, the important findings here are that issue content rises when the candidate's own personal organization sponsors the advertisement and when the candidate personally delivers the message. Candidate organizations sponsor advertisements with high issue content because they want to be seen as serious

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people seeking popular support. To do this, based on our analysis, they talk about the issues important to the public and to themselves. This is valuable discourse, from the standpoint of representative democracy.

The most important result regarding the bias of advertisements also relates to the factors discussed above. The ads that are most biased are those in which the candidates do not personally appear. Appearance in a biased ad could hurt their reputations and lead to a political backlash against them. Better to leave negative and misleading appeals to third parties. That strategy is less risky to the individual candidate.

Conclusion

The lesson from this analysis seems clear. Campaign discourse does not rise to an appropriate level, campaign tone is too negative, and news and ad content is insufficient for citizens to make informed judgments. And noncandidate organizations (such as parties and groups) bear considerable responsibility for the poor quality of campaign discourse. Only a portion of the problems we have documented come from the candidates themselves. Some of the most important deficiencies arise from political party committees or interest groups.

These results demonstrate that some aspects of the McCain-Feingold campaign reform legislation are on target.[12] Requiring greater disclosure from organizations using the candidate's picture or image in the closing weeks of the campaign makes good sense. Regardless of whether the communication is sponsored by candidate organizations, political parties, or interest groups, there is a compelling public benefit to demands for parties and interest groups that engage in electoral advocacy to be seen as political groups seeking to influence the election. They should be treated as campaign participants so that voters can hold them accountable for their actions. Because their communications currently tend to be the most biased, misleading, and negative, voters need to know enough about these organizations to evaluate their role in the election.

However, in other respects, we do not believe that there is substantial evidence of systemic change taking place through many of the other ideas suggested by reform organizations. In particular, we find little evidence in support of the view that pledges to avoid negativity, the promotion of ethical standards within the campaign consulting profession, pushes for best practices in campaign conduct, and improved consultant training and certification are going to lead to better campaign discourse, at least based on the standards favored by reform organizations.

Pledges to avoid negativity, for example, have not been widely employed and are subject to political manipulation. When one candidate "goes negative"

[12] Mann, "Linking Knowledge and Action," 69–84; and Goldstein and Freedman, "Measuring Media Exposure," 1189–1208.

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in the middle of an election campaign, the other candidate typically responds with the justification that "the other person started it." With regard to pledges to avoid negativity (however the term gets defined), candidates in competitive races are not motivated to stick to the pledge, because it is too easy for each side to blame the other for the escalation and mislead voters and journalists about blame for uncivil discourse.

Models of campaign reforms that are not very visible, such as those featuring industry self-regulation, voluntary codes of conduct, behind-the-scenes training, or enlightened self-interest on the part of candidates and consultants, are also not likely to be effective. Professional campaign associations tend to be weak. It is clear that the American Association of Political Consultants (AAPC), the major professional association of political professionals, has little power to sanction consultants who engage in bad behavior. Indeed, the AAPC is not an appropriate vehicle for ethics reform, because many consultants are not members of the organization, it does not have a history of effective enforcement, and consultants who are members do not believe it should play that role.

For campaign reform to be effective, advocates must take into account both the incentives that campaigners have in conducting their campaigns and the political nature of elective politics. Elections are inherently conflictual. Candidates, parties, and groups compete to present themselves in the most-favorable light. They take positions and engage in strategies designed to attract voters. To the extent that taking positions makes them come across well, they will be quite specific on the issues. And if campaigning in a misleading manner causes them to look bad, the disincentives to taking such action will be strong.

Appeals to enlightened self-interest within the campaign profession are doomed, because campaigners have clear incentives to win. Political professionals will use whatever strategies will sway the electorate. Regardless of whether appeals are misleading, negative, or biased, candidates and their supporters will employ what works and avoid tactics that backfire or create negative publicity for themselves. Only those reforms that tap into this incentive structure and are visible to voters and journalists are likely to be successful. One of the biggest problems in American elections now is that there is little media coverage of reforms. Several consultants told us that reforms that were not covered by reporters tended to be ignored by candidates and not taken very seriously during the campaign. If criticism about campaign tactics is in the media, both candidates and consultants pay close attention to it. And if there is little coverage, campaigners will ignore the reform effort. Visibility is a key factor in policing campaign conduct and improving campaign discourse.

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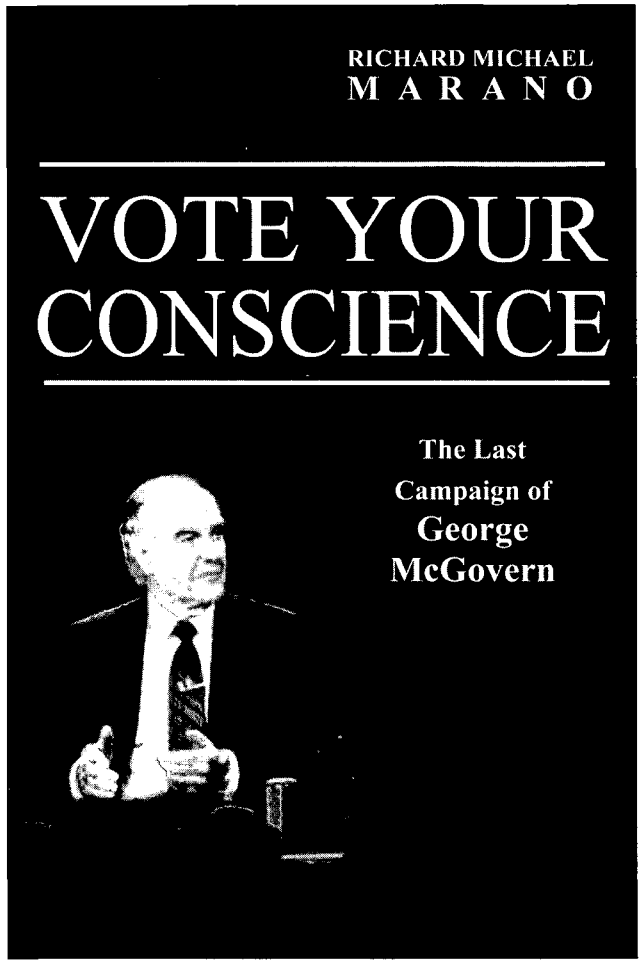

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Signaling Credibility: Electoral Strategy and New Labour in Britain

MARK WICKHAM-JONES

Many commentators, as well as leading figures within Labour, have concluded that the Party's landslide victory in the 1997 United Kingdom general election was based on a Downsian-style strategy, the key feature of which was an alignment of policy proposals with the preferences of the median voter.[1] Having lost four successive elections, Labour finally reoriented its programmatic outlook to meet popular desires, with consequential success at the polls. In recent work, Anthony Heath, Roger Jowell, and John Curtice have qualified this rational-choice account, emphasizing the significance of party differences, the potential impact of policy proposals, and the competence of the political actors concerned.[2] In this article, I assess the character of Labour's electoral strategy between 1979 and 1997 and consider whether the Party's recovery can be attributed to a Downsian strategy. I adapt the framework developed by Heath and his colleagues, one that is appropriate because, although it is built on orthodox rational-choice foundations, its modifications highlight some distinctions with the Downsian model. I make one significant emendation to it: I emphasise the importance of signaling by politicians as a means of conveying to voters the substance of their intentions once elected to office. I define signals as the plethora of instruments by which politicians communicate their desires and objectives to the electorate, a broader definition

[1] See, for example, Colin Hay, *The Political Economy of New Labour* (Manchester, UK: Manchester University Press, 1999), 92–104; and David Sanders, "The New Electoral Battleground" in Anthony King et al., *New Labour Triumphs: Britain at the Polls* (London: Chatham House, 1998), 217.

[2] Anthony Heath, John Curtice, and Roger Jowell, *The Rise of New Labour* (Oxford, UK: Oxford University Press, 2001).

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than that to be found in the relevant economics literature, but one that encapsulates the relevant activities of parties. Given its foundation in an economic approach, signaling is a particularly apposite schema with which to extend a rational-choice framework, although other emendations of such theory are obviously possible.[3] The paper proceeds as follows: In the next section, I lay out the framework within which the empirical material will be discussed. In sections that follow, I discuss Labour's electoral strategy in the 1983, 1992, and 1997 general elections. Finally, I return to my central theme and ask whether Labour's revival was a result of adopting, in one form or another, a Downsian strategy. My conclusion is that the quality of Labour's signals to the electorate offers an important explanation of the Party's electoral failures and successes over the last twenty-five years. One caveat should be noted: I am attempting to test neither the propositions laid out by Anthony Downs in his path-breaking volume nor the model designed by Heath and his colleagues. My task is the much simpler one of attempting to characterize Labour's electoral recovery.

Assessing Labour's Decline

Between 1979 and 1992, the British Labour Party lost four successive general elections. Political scientists appraised this decline in a variety of ways. Rational-choice accounts, however, predominated in much of the discussion. Grounded in the work of Anthony Downs's pioneering 1957 book, they concluded that the explanation for Labour's downward spiral was straightforward: an ideologically extreme party had made unpopular policy choices far removed from the position of the median voter and had reaped the inevitable consequence in terms of electoral failure. Notably, in a series of publications, Ivor Crewe remorselessly charted the party's disintegration. The corrosion of the Labour vote was not due to changes to the United Kingdom's social structure alone (especially shifts in class structure), Crewe argued, because the Party's vote had fallen by more, proportionately, than the decline in numbers of working-class voters. The remaining members of the proletariat did not endorse the Party: "The Labour vote within the working class did not remain constant but itself dropped very sharply."[4] In any case, social change raised the issue of agency and the Party's strategic response.[5] The decomposition of the Labour vote was the direct result of the Party's policy choices. Of the 1979 general election, Crewe reported an "ideological chasm" between Party and supporters: "Manual workers, Labour's natural sympathisers were on average slightly more in favour of Conservative than Labour

[3] For example, an account emphasizing political marketing is to be found in Eric Shaw, *The Labour Party since 1979* (London: Routledge, 1994), 124–151, 167–199.

[4] Ivor Crewe, "Labour Force Changes, Working Class Decline and the Labour Vote" in F. Fox Piven, ed., *Labor Parties in Postindustrial Societies* (Oxford, UK: Polity, 1991), 26.

[5] Crewe, "Labour Force Changes," 25.

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proposals."[6] This judgement was devastating: "For at least the last fifteen years people have voted Labour despite its policies."[7] By the time of the 1983 general election, the Party's platform was yet more problematic, as Labour's support hemorrhaged.[8] Anthony Heath and his colleagues conclude, "Most commentators and certainly subsequent Labour leaderships have taken it for granted that the 1983 strategy was not electorally viable because it was too leftwing for the electorate to stomach."[9] In subsequent general elections, the Party's recovery was hesitant, limited, and inadequate.

These obituaries proved premature. In 1994, Tony Blair, recently elected as leader, re-branded the party as "New Labour." In 1997, five years after its fourth successive defeat, Labour won a crushing victory, with a majority in the House of Commons of 179. It was an extraordinary result, in which half of the ruling Conservative MPs lost their seats, including seven members of the Cabinet, as their party's share of the vote fell to 31.4 percent, with a swing against them of 10.3 percent.

The Labour Party's account of its 1997 victory, largely based on standard rational-choice foundations, acknowledged the importance of social change and was blunt. "Old" Labour had failed to meet the policy preferences of the electorate. "New" Labour, under Tony Blair's leadership since 1994, had not. Philip Gould, an opinion pollster and close adviser to Blair, commented of the party in the mid-1980s, "Nearly all Labour's policies were in the unacceptable left-field."[10] Only after 1994, with the death of its leader, John Smith, and his replacement by Blair, were the necessary changes introduced. Blair completely transformed the Party; above all, he abandoned long-held policy positions and so ruthlessly repositioned its programmatic outlook. Of the past, he commented: "Society had changed and we did not change sufficiently with it. Policy prescriptions for one generation became confused with basic principles that are timeless."[11] The Party had failed to meet the aspirations, essentially material, of its once-loyal base. At the 1996 conference, Blair recounted an encounter before the 1992 general election with a potential supporter who had rejected the party: "As far as he was concerned, being better off meant being Tory too.... He thought our instincts were to stop him."[12] Under Blair, the Party's outlook was realigned to meet those aspirations and preferences.

[6] Ivor Crewe, "Why the Conservatives Won" in Howard Penniman, ed., *Britain at the Polls, 1979* (London: American Enterprise Institute, 1981), 297.

[7] Ivor Crewe, "The Labour Party and the Electorate" in Dennis Kavanagh, ed., *The Politics of the Labour Party* (London: George Allen and Unwin, 1981), 37.

[8] Ivor Crewe, "How to Win a Landslide without Really Trying" in Austin Ranney, ed., *Britain at the Polls, 1983* (London: American Enterprise Institute, 1984), 173.

[9] Heath, Curtice, and Jowell, *The Rise of New Labour*, 84.

[10] Philip Gould, *The Unfinished Revolution* (London: Little Brown, 1998), 51.

[11] Tony Blair, "Why Modernisation Matters," *Renewal* 1 (October 1993): 4–11.

[12] Tony Blair, speech, Blackpool, 1 October 1996 in *Labour Party Annual Conference Report, 1996* (London: Labour Party, 1996), 81.

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Many scholars concluded New Labour's analysis to echo a Downsian perspective, one that the Party had adopted in a calculating fashion.[13] Of course, quite what defines a Downsian approach is contested (and to be contrasted with the subtlety of Downs's carefully worded volume). Nevertheless, the term *Downsian* has become an accepted part of political discourse, albeit a poorly labelled one. John Ferejohn notes that Downs transformed the way "empirical researchers and even casual observers think and talk about electoral politics."[14] I take the term Downsian to indicate that a) voter preferences are fixed; b) the members of the electorate allocate their votes on the basis of policy alignments; c) in a two-party system, parties will converge in terms of policy platforms; d) politicians will seek to meet the preferences of the median voter in a unidimensional space (an accommodative strategy); e) designing such a strategy will involve quantitative opinion polling; and f) often parties will come to compete on ability as much as on distinct policy positions.[15] To be sure, these conditions simplify the Downsian approach, and some follow indirectly from the issues mapped out in *An Economic Theory of Democracy*.[16] But they do so in a way that reflects much of the practical discussions of such matters. Frequent references to such an approach are to be found in the literature surrounding New Labour. Colin Hay argues trenchantly that, taking the votes of the left-inclined for granted, Labour has sought to locate itself to the right of the median voter to overcompensate for past failures and win over uncommitted members of the electorate.[17] In 1996, Blair was explicit: "If we continue to occupy the centre ground, ... if we attract support from the centre as well as the centre-left, then we will be able to benefit significantly."[18] In similar fashion, Philip Gould reported of Labour's 1992 defeat, "The cleavage between people and party which opened twenty years before, and reached its peak in 1983, had still not closed."[19] Hay concludes, "It [the Downsian approach] offers a disarmingly accurate (if clearly somewhat simplified) description of that politics [of New Labour]."[20] Likewise, David Sanders argues, "In true Downsian fashion, Labour moved towards them. In equally Downsian fashion, they [voters] responded."[21] Many academics concluded that the cost of such a move

[13] See for example, Michael Temple, "New Labour's Third Way: Pragmatism and Governance," *British Journal of Politics and International Relations* 2 (October 2000): 302–325.

[14] John Ferejohn, "The Spatial Model and Elections" in Bernard Grofman, ed., *Information, Participation and Choice* (Ann Arbor: University of Michigan Press, 1993), 107.

[15] See Anthony Downs, *An Economic Theory of Democracy* (New York: Harper Row, 1957), 297.

[16] So e) follows from a) and d).

[17] Hay, *The Political Economy of New Labour*, 100.

[18] Gould, *The Unfinished Revolution*, 277.

[19] Ibid., 158.

[20] Hay, *The Political Economy of New Labour*, 101.

[21] Sanders, "The New Electoral Battleground," 217.

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was the abandonment of the last vestiges of the Party's commitment to reformism.[22]

Three features of the model developed by Heath and his colleagues to explain New Labour's recovery are noteworthy. First, they argue that voters do not look at programmatic positions but at policy differences between the parties competing for office.[23] What matters is not so much whether a party is close to the median voter but whether the parties are far apart. Second, voters do not weight policy issues equally. What matters is not a simple sense of an issue's salience, but whether a government can shape outcomes on it, "where there is the greatest likelihood that the parties will actually be able to implement their policies."[24] An area might be salient but outside of a government's capacity to influence results. Third, voters' policy preferences are mediated by a conception of party competence. "If a party is believed to be relatively incompetent, this is likely to mute the electoral response to a policy change even more."[25] Heath et al. do not formally define competence. Rather, they suggest that electors have a notion about the ability of politicians to deliver on their promises. The concept includes a party's capacity to remain united as well as its capability of securing particular outcomes. To be sure, Crewe noted the importance of credibility as an issue; for Heath and his colleagues, however, it is a central explanatory factor. The key indication of competence for Heath and his colleagues is an empirical one, found in the Thatcher administrations of the 1980s.[26]

The emphasis placed on party differences, on capacities, and credibility place Heath and his colleagues at odds with the orthodox textbook rational-choice model of political competition. I focus on governing capacities and perceptions of competence. To these issues, I add another: signaling. Signaling concerns the ability of politicians standing for office to demonstrate to voters their true intent should they be successful. In economics, signaling arises when an actor must make a choice between two potential products, where one is likely to be of high quality, the other of low quality. The difference is, however, unobservable. Vendors of the high-quality product need a signaling mechanism to demonstrate that theirs is the better of the two. The classic example concerns MBA degree programs: regardless of the ability they add to a worker's potential, they act as a signal because that individual has the capacity to acquire them.[27] Paul Milgrom and John

[22] Ivor Crewe, "The Thatcher Legacy," in Anthony King, et al., *Britain at the Polls 1992* (London: Chatham House, 1993), 25; Hay, *The Political Economy of New Labour*, 58; Leo Panitch and Colin Leys, *The End of Parliamentary Socialism* (London: Verso, 1997), 4, 259.

[23] Heath, Curtice and Jowell, *The Rise of New Labour*, 157.

[24] Ibid.

[25] Ibid., 162.

[26] Ibid., 166.

[27] The classic statement is Michael Spence, *Market Signalling* (Cambridge, MA: Harvard University Press, 1974); a good summary is John Riley, "Signalling" in John Eatwell, Murray Millgate, and Peter Newman, eds., *The New Palgrave Dictionary of Economics*, vol. 4 (Basingstoke, UK: Macmillan, 1988), 330–333.

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Roberts define signaling as "acting in a way that demonstrates to others the actor's intentions or abilities or some other characteristic about which the actor has private, unverifiable information."[28]

In politics, signaling becomes important given the problem of time inconsistency.[29] Politicians standing for election may offer promises at one point in time, only to renege and do something different once in office. Modelling the game theoretically as a series of infinite reiterations in which politicians must meet their promises, over time, to be credible offers a possible solution. But the solution does not help the candidate whose party, such as Labour during the 1980s and early 1990s, has been out of office for a prolonged period. Such a candidate has no reputation (or basis on which to attain one). An alternative solution would be to offer a contract with voters in which explicit, binding promises are offered. Again, such a contract would be impractical, given the nature of the product (legislation in response to unforeseen events, among other items) that is involved.

Signaling is a significant feature of the process by which politicians offer reassurance to the electorate and so compete for votes. Policy pronouncements alone will be insufficient to reduce doubts that voters may have about the promises they are offered. The economist John Taylor notes, "Rational individuals need more to go on than mere announcements."[30] Accordingly, Randall Calvert writes, "Voter uncertainty about the true intentions or abilities of a candidate might be alleviated if the candidate can devise some signal that, although not directly related to the outcomes he will provide in office, is believed by voters to separate capable from incapable officeholders, or true ideologues from impostors."[31] Signals involve the range of measures by which politicians seek to persuade the electorate that proposed policies will be achieved. Successful implementation comprises two distinct features: first, that the politician is truthful; and second, that the goal is attainable. Transmitting signals is problematic, inasmuch as voters have incentives to discount them: "In general the receiving player is expected to ignore those signals that are associated with inferences advantageous to the sending player and that can be taken at low or zero cost."[32] Accordingly, signals will take a plethora of forms, formal and informal, including interviews, speeches, and documents. And they will be directed at different audiences: segments of the electorate, business, the press, and so on.

[28] Paul Milgrom and John Roberts, *Economics, Organisation and Management* (London: Prentice Hall, 1992), 155–156, 342–343, 604.

[29] Finn Kydland and Edward Prescott, "Rules Rather than Discretion: The Inconsistency of Optimal Plans," *Journal of Political Economy* 85 (June 1977): 473–491; see also Torsten Persson and Guido Tabellini, *Macroeconomic Policy, Credibility and Politics* (London: Harwood, 1990), 19–98.

[30] John Taylor, "Establishing Credibility: A Rational Expectations Viewpoint," *American Economic Review* 72 (May 1982): 81–85.

[31] Randall Calvert, *Models of Imperfect Information in Politics* (London: Harwood, 1986), 53–54.

[32] William Bianco, "Uncertainty, Appraisal and Common Interest: The Roots of Constituent Trust" in Valerie Braithwaite and Margaret Levi, eds., *Trust and Governance* (New York: Russell Sage Foundation, 1998), 260.

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Successful signals will demonstrate differences between the parties, explain the impact that measures will have, and secure credibility for the actors concerned.

Several distinct factors will improve the chances of a genuinely moderate party successfully signaling its intentions. First, signals should be consistent, both with each other (parties make many signals at the same time) and with those made in the recent past (as much as is possible). If signals are to be consistent, they should emanate from a limited number of sources within the party (in the absence of a consensus authority within, it should be centralized). Second, signals should be detailed and transparent, to offer a comprehensive overview of what is being proposed.[33] Third, they should be repetitive. Fourth, they should be costly: sinking resources into a signal may help to demonstrate a party's purpose. Equally, demonstrating costs by taking potentially unpopular decisions may signal a party's commitment to a trajectory. Fifth, signals may be symbolic, as much as material and measurable. Sixth, they should be easy to understand, so that voters can comprehend what is contained within them without having to acquire expensive information. Seventh, they should, of course, be well packaged, so that they are persuasive. Eighth, they should focus on side issues as a way of revealing the true character of the actors concerned: "Voters may also focus on characteristics because they cannot be the product of calculation and therefore provide a clearer signal of a candidate's policy concern."[34] Such features do not, of course, guarantee that a party will be successful in signaling to the electorate; rather, they map out some of the characteristics taken by a successful signal. How do signals work? Put simply, they provide a basis on which actors are prepared to trust the claims made by others: "The question for the truster is whether the trustee has qualities that she believes, in virtue of experience or common sense or on some other basis."[35] Taken together, the characteristics charted above indicate that a party may be able to secure a *separating* equilibrium (one where the honesty of the actors becomes apparent from their signals) as opposed to a dirtier, *pooling* one (where the possibility remains that politicians might be deceitful).[36]

Labour's Nadir: 1983

Labour's disastrous performance in the 1983 United Kingdom general election was not, according to Heath and his colleagues, attributable simply to its

[33] For a recent discussion, see David Stasavage, "Transparency, Democratic Accountability and the Economic Consequences of Monetary Institutions," *American Journal of Political Science* 47 (July 2003): 389–402.

[34] Bianco, "Uncertainty, Appraisal and Common Interest," 262.

[35] Michael Bacharach and Diego Gambetta, "Trust in Signs" in Karen S. Cook, ed., *Trust in Society* (New York: Russell Sage, 2001), 176.

[36] Keith Blackburn and Michael Christensen, "Monetary Policy and Policy Credibility: Theories and Evidence," *Journal of Economic Literature* 27 (March 1989): 1–45; and Bacharach and Gambetta, "Trust in Signs," 159.

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left-wing policy platform. The catastrophe was largely the result of the electorate's perceptions about the Party's competence: "The Labour party was hopelessly divided over this radical strategy and was beset by high profile disputes."[37] Its program was not as unpopular as many political scientists have indicated. Take, for example, the Party's commitments to increased spending on health. On this salient issue, the electorate was well to the left of the Conservative Party. Likewise, Labour's goal of full employment was frequently endorsed: the Party's means to achieve it, however, were perceived to be unrealistic.[38] On other matters, the successful implementation of policies by the Conservatives, such as privatization, shaped popular preferences.[39] On some issues, of course, most obviously nationalization and defence, Labour's position was unpopular.[40] However, on the basis of popular preferences alone, Heath and his co-authors conclude, the 1983 general election would have been a dead heat, with little to choose from between the platforms on offer. But Labour led on matters where there was less distinction from the Conservatives' position and on which voters perceived governments to have less impact.

There are some similarities between the explanation offered by Heath and his colleagues to those proffered by Crewe. Competence forms part of the latter's account of the 1983 general election; of Labour's plans to tackle unemployment, he writes, "The electorate was profoundly sceptical," continuing, "Labour's credibility on other issues was even weaker."[41] Labour's disunity played an important part, alongside extremism and image, in determining the Party's disastrous share of the vote.[42] Likewise, although articulating an implicitly rational-choice account, Philip Gould also notes "division, extremism and weakness," only the second of which reflects immediately on policy substance.[43] Overall, and in contrast to standard rational-choice accounts, however, policies were less important than were perceptions of competence. Between 1979 and 1983, Labour's support fell across all positions of the electorate when spatially distributed from left to right: backing among the most left-wing voters fell by 9 percent, whereas among the electorate as a whole, the drop was 13 percent.[44] Heath and his colleagues state, "We attribute this to the low opinion, shared by voters at all points on the political spectrum, of Labour's competence."[45]

Qualitative evidence provides convincing support for this judgement about the 1983 general election. Between 1979 and 1983, Labour was preoccupied with

[37] Heath, Curtice, and Jowell, *The Rise of New Labour*, 84.

[38] Mark Wickham-Jones, *Economic Strategy and the Labour Party* (Basingstoke, UK: Macmillan, 1996), 189–192.

[39] Heath, Curtice, and Jowell, *The Rise of New Labour*, 43–44.

[40] Ibid., 157.

[41] Crewe, "How to Win a Landslide," 179.

[42] Ibid., 183.

[43] Gould, *The Unfinished Revolution*, 20.

[44] Heath, Curtice, and Jowell, *The Rise of New Labour*, 91.

[45] Ibid., 157.

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a series of bitter internal disputes. These concerned the constitutional structure of the Party as much as policy matters. Taken together, these fratricidal, highly visible conflicts undermined any notion of Labour as a governing party. In January 1981, those right-wingers who felt that the struggle for the Party was lost departed to found the Social Democratic Party (SDP; much of Labour's collapse in 1983 concerned the extent to which the anti-Thatcher vote was split between it and the SDP with their Liberal allies). Further disputes concerned Tony Benn's 1981 campaign to be the Party's deputy leader and the leadership's somewhat half-hearted desire, in the face of much opposition from the left, to take action against Militant, a group of Trotskyite entryists. In all of these, policy issues took a back seat. When the Party did debate policy issues, its leading figures were frequently unable to reach agreement. By the autumn of 1981, the veteran commentator Peter Jenkins concluded in *The Guardian*, "The split in the Labour party cannot be contained ... the party is in open civil warfare."[46] By June of 1983, Labour remained an internalized party. Policy formation and analysis, let alone criticisms of the Conservative government, received little attention. The splits within the Party had significant electoral consequences: there is a direct causal link between the internal conflicts and Labour's electoral decline.

Whatever the content of Labour's policy proposals, the Party offered a series of disastrous signals between 1979 and 1983. To be sure, the signals were detailed, repetitive, and often orientated around symbols. But they were not coherent, and they did not emanate from a central authority in the Party. Detail came at the expense of simplicity: many of the measures were extremely complex in their construction, often relying on unrealistic assumptions (pages and pages on economic policy, for example, depended on low-inflationary wage settlements). More significantly, the Party frequently spoke with more than one voice, as leading figures within the House of Commons distanced themselves explicitly from the formal measures articulated by the National Executive Committee outside Parliament. Jim Mortimer, the general secretary, wrote afterward, "In the months preceding the election efforts were made to build bridges between different views within the party but the public view persisted that Labour's unity was shallow."[47] The Party did not invest in these signals: for example, it was slow to take action against Militant. Indeed, the Party appeared to pander to extreme groups. Nor did Labour develop any "side" issues as a means of demonstrating the intent and trustworthiness of its leadership. Profiles of the Party's aged leader, Michael Foot, portrayed him as an eccentric and weak individual, one ill-suited to the premiership. Throughout the Parliament, the Party's policies were poorly packaged and frequently offered to voters in a shambolic, take-it-or-leave-it fashion. Assessing Labour's performance is

[46] Peter Jenkins, "The Final Break between Benn and Foot," *The Guardian*, 18 November 1981.

[47] Jim Mortimer, "Election report 1983," internal report for the National Executive Committee, July 1983 (Labour Party Archives, Manchester), 4.

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complex: did the individual preferences of voters shape their political alignments, as Crewe indicates, or did preexisting party configurations determine their electoral stance on a range of policy issues? At times, Labour's policy profile was not as bad with voters as might have been expected: as late as January of 1981, a plurality of voters thought the Party had the best program, a set of measures that remained unaltered at the subsequent general election.[48] Arguably, the Party's dreadful signals and voters' perceptions of its incompetence played an important part in the electoral defeat of June 1983.

Labour's Slow Revival between 1983 and 1992

Under Neil Kinnock's leadership, between 1983 and 1992, Labour was able to reorient its programmatic outlook, undertake significant internal reforms, and revise its electoral strategy. Following another defeat in June of 1987, the pace of internal reform picked up: perhaps most notably, during the 1987–1989 policy review, a sustained re-examination of the Party's program was undertaken, one that paid considerable attention to the electoral popularity of any proposals. During the run-up to 1992, Labour's prospects looked better. The economy was in a parlous state. Interest rates were hiked up in 1989, peaking at 15 percent for over a year. Growth collapsed, and inflation soared to over 10 percent for the first time in nearly eight years. In 1990, after falling for four years, unemployment started to increase. Voters preferred the Party's stance on a variety of salient matters. Labour's tax plans were carefully costed: minimal tax increases would be redistributed, ensuring that the majority of families would be better off (albeit not by much). Public opinion surveys indicated that such redistribution (tax increases to fund public services) enjoyed popular support; that is, Labour could be concluded to have adopted a position close to that of the median voter, from which it would benefit electorally. Indeed, before the 1992 general election, Labour led on many individual policy issues: "If electors had voted exclusively on their issue preferences, Labour vote share would have been in the region of 44 percent" (and not the 35 percent it attained).[49]

The framework put forward by Heath and his co-authors provides a frank explanation for Labour's disappointing performance in 1992 (although they do not address the issue themselves in detail). Their model indicates that voters still had doubts about Labour's competence and about the credibility of the Party's promises. This conclusion echoes that of Crewe in his account of the election: unemployment had gone up, he accepts, but, in the eyes of a sceptical electorate, "The Labour party lacked credibility on the issue."[50] Such doubts meant that a lead over policy matters was insufficient. Emphasizing economic

[48] Anthony King, *British Political Opinion, 1937–2000* (London: Politicos, 2001), 125.
[49] David Sanders, "Why the Conservatives Won—Again" in King et al., *Britain at the Polls 1992*, 197.
[50] Crewe, "The Thatcher Legacy," 13.

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variables, and voter perceptions of them, David Sanders concludes that the 1992 general election outcome was decisively shaped by material factors. At a time of improving perceptions about future economic performance, voters did not blame the Conservatives for the recession. Sensing that they would lose out under Labour, such observations shaped their ballots.

Two important points about the 1992 general election can be noted. First, the outcome demonstrates the difficulties of attempting to position a party on the median voter in an overly crude fashion. Sanders concludes that Labour failed to locate the median: "As late as April 1992, however, Labour remained committed to the sort of 'tax and spend'—'socialist'—solutions to social and economic problems that continued to alienate middle-class, middle-income voters."[51] Yet, survey evidence repeatedly indicated that a majority of voters would trade higher taxes for increased provision of public services, and Labour adopted just such a platform for the election, emphasizing the need to increase revenue to fund better education and health services.[52] It appeared to be a straightforwardly Downsian provision: those who would be better off far outweighed the number of losers. The electorate's preferences proved, in the event, to be more complicated than the survey evidence indicated. Voters wanted better public services but, failing to make the direct link, proved less willing to fund them. A general perception appeared to be that others should provide the tax. Heath and his colleagues rightly conclude, "Politicians might be right to approach the survey evidence with a certain degree of scepticism."[53] The median voter proved to be less easily identifiable than Labour's strategy appeared to presuppose. The Party's tax plans hurt the *aspirations* of many voters, those who would not pay the increase immediately but who aspired to be in such a position within a few years. Too many voters concluded that eventually, at any rate, they would be worse off. Whatever the technicalities of Labour's budget plans, many within the electorate feared further tax increases, a position ruthlessly exploited by the Conservatives (and some newspapers).[54] In this sense, Labour's programmatic position was directed at the median; basically, for a number of reasons, the party failed to locate it.

The second point concerns the difficulties that parties encounter in designing and signaling policies that are credible as well as popular. Labour could not ensure electoral success simply by adopting a new set of moderate policies, ones in tune with electoral preferences. The Party had to establish a reputation for honesty, it had to generate trust with voters, and it had to foster an image of reliability. Attaining such a reputation proved problematic. It could be done through a series of signals that laid out the Party's modest intent in a categoric, unyielding fashion. In the run-up to the 1992 general election, the Labour

[51] Sanders, "The New Electoral Battleground," 216–217.
[52] *Gallup Political and Economic Index* 379 (March 1992): 8.
[53] Heath, Curtice, and Jowell, *The Rise of New Labour*, 47.
[54] See, for example, Gould, *The Unfinished Revolution*, 126–130.

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leadership sought to offer such signals to the electorate in the form of speeches, interviews, and explicit policy documents. Most innovatively, the party attempted to win the confidence of business through a series of meetings with employers and others, at which its limited commitments were detailed. It proved to be a difficult process, inasmuch as voters (and business) remained unpersuaded. Interestingly, Downs notes this difficulty briefly: "If an opposition party is not reliable [by which he means consistent in statements over time], it will be unable to gain the confidence—and hence the votes—of rational citizens."[55] In a similar vein, Michael Laver reflects: "Voters will be unimpressed with promises even if the substance of these proposes to do exactly what they want, if they do not expect the promises to be carried out, in effect if they do not regard the person making the promises as credible."[56] Changing policies, Laver concludes, can damage credibility. Interestingly, Blair accepted this point in the post-election wake: "In this context some policy change could appear opportunistic rather than, as it was, genuine."[57] As leader, Neil Kinnock had transformed Labour dramatically by jettisoning long-held policy promises in a ruthless fashion; arguably, this undermined his credibility.

Past behavior by politicians will shape voter perceptions of the future. In a sense, such a loss happened to Labour in 1992. It was not enough for Labour to adopt a set of modest policy documents and assume that voters would adjust their attitude toward the Party accordingly. The Party had to convince the electorate about the extent and durability of the transformation it had undergone. Labour politicians had to demonstrate their commitment and their sincerity. The credibility of the Party's signals forms an important element in this analysis of Labour's 1992 general election defeat. It was a weakness of which the Party leaders and their advisers were well aware. Reams of opinion poll data were used in the construction of Labour's 1987–89 policy review; such information did not assist the party in deploying sufficiently persuasive signals.

The Birth of New Labour 1994–1997

Labour's rapid and remarkable recovery after the 1992 general election was shaped by two events. On 16 September 1992, in a far-reaching reversal of the Conservative government's economic policy, the United Kingdom was forced from membership in the European exchange rate mechanism (ERM). The episode had an immediate, long-lasting impact on the opinion polls. Just over eighteen months later, Labour leader John Smith died (in May of 1994) and was replaced by Tony Blair (in July). At the Party's annual conference in 1994, Blair re-launched the party as "New Labour." The apparent impact of Blair's

[55] Downs, *An Economic Theory of Democracy*, 107.
[56] Michael Laver, *Private Desires, Political Action* (London: Sage, 1997), 115.
[57] Blair, "Why Modernisation Matters," 9.

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leadership was to transform perceptions of competence. Significant developments in the Party's program included a commitment to accept Conservative spending levels for the first two years of a Labour administration, a promise not to increase personal taxation rates, and a rejection of what was labelled rhetorically as the Party's previous commitment to tax and spend. Any public borrowing would only be to fund investment (and not consumption), and the level of public debt would be sustained at a stable ratio to gross domestic product. Labour's revival was significantly encouraged by the myriad of difficulties experienced by the Conservatives after 1992. These troubles severely dented the Major government's reputation for competence, especially concerning economic matters (such as the ERM crisis).

In terms of electoral support, New Labour made huge gains on the right of the ideological spectrum. Under Kinnock, the Party's limited recovery had been fairly evenly distributed: as such, the Party's backing exhibited a downward shift toward the right of the scale, a reflection of the Party's left-inclined core base. By 1997, the curve of Labour's ideological support was much flatter, inasmuch as extensive gains were made among previously Conservative voters. The electorate ceased to perceive Labour as a sectional party, one based on the trade unions and a core of working-class support: "In essence, New Labour had made itself more appealing to its traditional opponents without alienating its traditional supporters . . . . It had successfully become a catchall party."[58]

Labour relied heavily on focus groups in the run-up to the 1997 general election. The Party had, of course, made use of them in the past. Under Blair's leadership, however, they became much more important: they refocused not just the content of Party policy but the means by which it was delivered and to whom (that is, which groups of the electorate). It is by no means obvious that the use of such groups can be characterized as Downsian in the way that Colin Hay indicates to be the case. First, the basic Downsian model assumes that parties need to collect quantitative information about preferences; the emphasis of focus groups is on qualitative data. They reveal a level of detail, of "voice," about preferences that polls do not. David Butler and Dennis Kavanagh argue, "Had Mr Blair and Mr Brown merely followed the polls they would not have promised to rule out tax increases to boost spending on public services."[59] Gould reports, "In a group it is possible to test out the strength and depth of feeling around an issue, which can be more difficult, although not impossible, in a conventional poll."[60] Second, the Downsian model presumes hard, fixed preferences. Focus groups, by contrast, suggest that preferences are soft and malleable; they need to be probed in a deliberative context so that individuals reveal their underlying preferences. Gould

[58] Heath, Curtice, and Jowell, *The Rise of New Labour*, 128.

[59] David Butler and Dennis Kavanagh, *The British General Election of 1997* (Basingstoke, UK: Macmillan, 1998), 60–61.

[60] Gould, *The Unfinished Revolution*, 328.

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noted, "They [participants] often begin nervously but then relax and talk freely, and usually do not want to stop."[61] Third, the Downsian model focuses on the median voter; focus groups are targeted at particular sections of the electorate (with who they voted for in a previous election as a criterion).[62] For these reasons, New Labour's extensive use of focus groups can be considered to be a break with the basic Downsian model. The difficulties that Labour encountered in 1992, of course, make such a break easy to understand. Although the results might be similar in terms of apparent party convergence, it would be wrong to assume that New Labour adopted an uncritically Downsian approach.

Soon after the 1992 defeat, Patricia Hewitt and Philip Gould wrote a memorandum, later published, in which they called upon Labour to concentrate not on the content of policy but on the processes by which it was delivered. In particular, the Party needed to learn from the processes adopted by the Democrats in the United States.[63] Before 1992, Labour had struggled to get signals about its intent over to the electorate in a persuasive fashion. Under Blair's leadership, Labour's signals were patent, simplistic, and repeated relentlessly. For the next three years, the Labour leadership worked tirelessly on the issue of competence. Labour's signals were coherent and transparent, and emanated from a single source of authority within the party (usually comprising just the leader's office and Gordon Brown as shadow chancellor). Policy document followed press release followed briefing paper as Blair and Brown produced a flood of information in this period, much of it mapped out in minute detail (the rigor with which the shadow chancellor's economic policies and rules on fiscal measures were constructed, for example). With Kinnock and Smith replaced by Blair and Brown, the Party's new leadership was much less associated with past policies and confused signals, a point noted by Downs: "Because individual men become identified with certain policies it is often necessary for a party to shift its leadership before it can shift its platform."[64]

The leader's control of this process was absolute. Blair told one audience, "There is no longer any question about Labour speaking with two voices to two different audiences."[65] When one wayward backbench MP hinted at tax increases, Brown was crushing: "I will make the decisions on tax."[66] Messages

[61] Ibid., 327.

[62] Ibid.

[63] Patricia Hewitt and Philip Gould, "Learning from success—Labour and Clinton's New Democrats," *Renewal* 1 (January 1993): 45–51; see also, Desmond King and Mark Wickham-Jones, "From Clinton to Blair," *Political Quarterly* 7 (January–February 1999): 62–74.

[64] Downs, *An Economic Theory of Democracy*, 111.

[65] Tony Blair, speech, Annual Conference of British Chambers of Commerce, International Conference Center, Birmingham, 3 July 1996, 11.

[66] Gordon Brown, "The Productivity Challenge," speech, National Film Theatre Industry Forum Business Conference, London, 23 April 1996, 7.

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were reiterated over and over again in a blunt fashion. The term *New Labour* was deployed whenever possible. In forthright, simple language, Blair and Brown frequently condemned the economics of tax and spend, with which they claimed Labour had previously been identified. The shadow chancellor told the *Financial Times*, "It is equally clear that the old Labour language, tax, spend and borrow, nationalisation, state planning, isolationism, full jobs for life for men while women stay at home—is equally inappropriate to the future as it was to the needs of the past."[67] Tackling the symbols of the past was not confined to a rejection of tax and spend: one of Blair's first acts as leader was to jettison Clause IV of Labour's constitution, the Party's historic commitment to nationalization. It was, for some commentators, "a very clear signal that New Labour was business friendly."[68] At all times, New Labour's message was carefully packaged and deliberately targeted toward a range of audiences. The Party established a rapid rebuttal unit, based on a computer program, to offer a swift response to Conservative allegations. In terms of targeted groups, one of Blair's first overseas visits was to address a News International conference in Australia (one of the group's newspapers, the tabloid *Sun*, switched allegiances at the 1997 general election, after having been virulently anti-Labour). Blair told the conference, "It is important that you understand the changes in the policies of the left of centre and in particular the nature and character of today's British Labour party."[69] At other times, the signals were directed at business groups.

New Labour's proposals were often uncomplicated and measurable. The Party leadership placed considerable emphasis on offering precise promises to the electorate. Five key pledges, covering health, education, unemployment, law and order, and the economy, were launched in July 1996. For each pledge, voters could assess a probable impact. Gould wrote: "To break through the barrier of distrust we had to offer the electorate a simple contract: elect me and if, in five years time, I have not delivered, then sack me."[70] On occasion, high-profile, straightforward policies were offered as an indication of what might be expected under a modernizing, moderate Labour government. For example, Blair negotiated a deal with telecommunications giant British Telecom to hook each school up to the internet.

Perhaps the two most important features of New Labour's signals concern the extent to which they were costly and involved side issues. The Labour leadership invested considerable resources in articulating its program. In particular, they spelled out to their traditional supporters in blunt terms the limited nature of what would be achieved under a Labour government.

[67] Philip Stephens, "Blair Shuns High Taxes and Backs Market Economy," *Financial Times*, 28 September 1994.

[68] See Public Policy Unit, *New Labour New Government? The Complete Business Guide to Labour's Policies* (London: Public Policy Unit, 1996), 4.

[69] Tony Blair, speech, Newscorp Leadership Conference, Hayman Island, Australia, 17 July 1995, 1.

[70] Gould, *The Unfinished Revolution*, 268.

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Blair was brusque with the 1995 Party conference: "Leave the battles of the past. Ballots, peaceful picketing, proper conduct of industrial disputes, these [Conservative] laws are staying."[71] Brown told the 1996 Labour conference, "There is no alternative strategy that will achieve Labour's goals."[72] The Labour leadership frequently engaged in "counter-scheduling," whereby new policies were laid out without compromise to old allies, a process intended to convey the Party's intentions to a wider audience.[73]

Much of the economic literature about signals focuses on side issues, the capacity for actors to reveal their true intentions through some other piece of information. At meetings with business executives, Blair explained in great detail the abandonment of Clause IV and the reforms to the Party's internal structure, a subject in which his audience can have had little direct interest: "We have rewritten our party's constitution to put at the heart of it support for markets and enterprise as well as an unshakeable commitment to social justice. We have altered the structure of the party to free it from the excess influence of pressure and interest groups. We now have an expanding membership from all sections of the community."[74] Blair's intention, however, was to give a manifest signal of the Party's transformation. Other side issues concerned the leader's Christianity and his connection with modern culture, especially rock music. Blair was unquestionably genuine in both (although arguably lacking in good taste in the latter), and they provided a useful means by which information about his character and trustworthiness could be conveyed to the electorate. With regard to the former, Blair's strong sense of Christian values and regular church attendance were frequently mentioned in profiles, interviews, and articles. On one occasion, for example, he flagged his bible reading: "As a private individual I find prayer a source of solace and I read the Gospels. They are compelling texts and a most extraordinary expression of sensitive human values."[75] In the latter domain, he participated in ceremonies (Q awards, Britpop awards) and was photographed reading *New Musical Express*.[76]

Through these signals, the Labour leadership explicitly acknowledged that the Party needed to prioritize credibility. The logic underlying this strategy was that, once in office, there could be no deviation from the path upon which the Party had already embarked. When confronted with hints about a change in trajectory upon election to office, Blair reacted angrily: "I can categorically say

[71] Tony Blair, speech, Brighton, 3 October 1995 in *Labour Party Annual Conference Report* (London: Labour Party, 1995), 101.

[72] Gordon Brown, speech, Blackpool, 30 September 1996 in *Labour Party Annual Conference Report* (London: Labour Party, 1996), 31.

[73] Hewitt and Gould, "Learning from Success," 48.

[74] Tony Blair, speech, British-American Chamber of Commerce, Grand Hyatt Hotel, New York, 11 April 1996, 1.

[75] Quoted by John Rentoul, *Tony Blair, Prime Minister* (London: Little Brown, 2001), 351.

[76] See John Harris, *The Last Party* (London: Fourth Estate, 2003), 189–190, 274–275.

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that I have nothing up my sleeve about what I plan to unleash after becoming Prime Minister. There would be no noticeable change the day after or even the week after."[77] Voters were able to trust Labour, not because the Party offered a contract (although it spoke a contractual language at times) or because it had already attained a reputation for probity, but because of the clarity, depth, and plausibility of the signals it deployed. The Labour leadership had bound itself to a modest trajectory well before entering office; more than that, they had signaled their intentions, and in so doing, demonstrated their true identity. Labour finally secured the image of competence and credibility that it had lacked in 1992. It was able to secure a separating equilibrium, not just against the Conservative government, but one vis-a-vis the Party's past, as well. At last, the electorate trusted the Party.

Labour's dramatic resurgence in the 1990s was aided by a plethora of Conservative problems, not just those concerning economic management and the ERM. Personal scandals and sleaze issues represented further side issues that revealed the apparently pure character of Labour and illustrated a gap between the parties. Europe was especially important, inasmuch as the growing pace of integration generated considerable hostility among the Conservatives. These concerns mirrored extensive Euroscepticism among the electorate. But the Conservatives were unable to reap any popular benefits. This outcome was, in part, because the issue split the Party and the government, some of whose members remained much more positive toward European integration. Such disunity resulted in a series of confusing signals that damaged the government's credibility. Paradoxically, being close to the median voter on this issue yielded no advantage, inasmuch as the Party was outflanked by a single-issue organization, the Referendum Party, that promoted parliamentary candidates and siphoned off votes. (In nineteen seats at the 1997 general election, the Conservatives lost by less than the Referendum party vote.) Labour, further from the median than the Conservatives, suffered no loss by playing down the salience of the issue, defering policy decisions on further European integration to future referenda, and offering a bland, vacuous rhetoric on the issue.[78]

The outcome of the 1997 general election was extraordinary.[79] As a catch-all party, Labour made gains among all social groups, and there was considerable tactical voting. The Liberal Democrats lost 1.1 percent of their share of the vote (down to 17.2 percent) but increased their number of seats in the Commons from eighteen to forty-six. Britain's first-past-the-post electoral system was, of course, a significant factor in determining the allocation of seats, one that favored the Labour party. Labour won smaller constituencies on average, took fewer

[77] Tony Blair, "Interview," *Sunday Business*, 21 April 1996.

[78] Heath, Curtice, and Jowell, *The Rise of New Labour*, 76.

[79] See, for example, David Denver, "The Results: How Britain Voted" in Andrew Geddes and Jonathan Tonge, eds., *Labour's Landslide* (Manchester, UK: Manchester University Press, 1997), 7–21.

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surplus votes (from large majorities) than the Conservatives, and lost fewer wasted votes (from seats it lost narrowly). R. J. Johnston and his colleagues estimate that, in all, the bias was worth sixty-eight seats, a large proportion of Labour's landslide.[80]

Just how important the re-branding of Labour as "New" was to the Party's electoral recovery is an open question. The strength of the Party's performance in the southeast, the losses endured by the Conservatives among their core groups, and the reversal of the gender gap (previously, women had been wary of endorsing Labour) are indications of the import of Blair's strategy. However, it remains the case that Britain's exit from the ERM in September of 1992 was exceptionally significant in shaping popular support for the parties. Labour trailed the Conservatives in the opinion polls in 1991 and 1992 by an average of 14 percent. Even after the April 1992 general election, until September, the party was, on average, 11 percent behind the government. The United Kingdom's decision to leave the ERM, forced by economic circumstances, had an immediate impact on perceptions of Conservative (in)competence. Throughout 1993, Labour led in the opinion polls by an average of 14 percent (although that increased to an average lead of 25 percent during 1995). Labour benefited from being out of office during the ERM fiasco: the Conservative administration took the blame. The consequence of the UK's departure from the ERM impacted on popular preferences long after 1992, an indication that voters are as orientated to the past as to the future. Disregarding subsequent economic improvements between 1992 and 1997, the electorate punished the Conservatives for this policy error. In a sense, this alignment reflects Anthony Downs's claim that voters look to the immediate past period and not toward the future in calculating their party differential.[81] Whatever similarities there might be in policy proposals between the parties, a gap had emerged between them over economic competence and ability. On top of the ERM debacle, John Smith's brief leadership between 1992 and 1994 is likely to have gone some way toward settling concerns over the competence of the Labour leadership. Labour's electoral recovery (although relatively fragile) commenced well before Blair was elected leader in July 1994.[82] New Labour's policy experiment built on top of well-established foundations.

Two other points are noteworthy. First, the extent of policy change under New Labour, as distinct from the Party's re-branding, should not be exaggerated. Many of the apparently new programmatic developments under Blair's leadership were anticipated under both Kinnock and Smith. Between 1983 and 1994, significant changes were made to economic policy, social welfare commitments,

[80] See, for example, R. J. Johnston et al., "New Labour Landslide—Same Old Electoral Geography?" *British Elections and Parties Review* 8 (1998): 35–65; and R. J. Johnston et al., "New Labour's Landslide and Electoral Bias: An Exploration of the Differences between the 1997 General Election and the Previous Thirteen," *British Elections and Parties Review* 9 (1999): 20–45.

[81] Downs, *An Economic Theory of Democracy*, 50, 298.

[82] Heath, Curtice, and Jowell, *The Rise of New Labour*, 159.

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and defence. Space precludes a full discussion of these. Two can be mentioned. New Labour's endorsement of the market mechanism and promotion of partnership with the private sector were presaged by policy reforms during the 1980s. New Labour's promises to borrow only for investment and to stabilize debt levels had been flagged before 1992, while in endorsing the ERM before 1992, the Party had shown a commitment to prioritizing the fight against inflation similar to that proffered by Tony Blair. What was pivotal under Blair was not the detail of programmatic renewal but the signaling to the electorate, directly and indirectly (via other actors, such as business and the media) of those developments. Such signals, and not the policy changes themselves, were central to the attainment of credibility. Second, arguably, at any rate, there remained a social democratic element, albeit watered down, in New Labour's platform, one based on redistribution and interventionism.[83]

Conclusions

In June of 2001, Labour won a second landslide victory, obtaining a majority of 167 in the House of Commons. The result was utterly expected: the Party had led the Conservative opposition in the opinion polls throughout the Parliament. Labour's management of the economy proved to be an important aspect of the government's popularity: the administration was as dominant over economic policy as it was over voting intention. Once or twice, the government's support looked fragile, most notably during a protest about fuel taxes in September 2000. Such moments were ridden out with relative ease. Moreover, once in office, New Labour was prepared to increase taxation. It did so by focusing on indirect means, what the Conservatives called "stealth taxes." Despite some predictions, such taxes had remarkably little impact on the electoral coalition underpinning the government. One commentator, David Marquand, claimed, "No project for social inclusion or regeneration of social capital will work unless it captures some of the winners' gains and redirects them to the losers."[84] Arguably, at any rate, New Labour was able to do just that. Stealth taxes paved the way for a degree of redistribution that did little to damage the government's electoral base. Whether such a pattern could be sustained, especially in a hostile economic environment, remained uncertain.

In May 2005, Labour won a third consecutive term in office, on this occasion with a dramatically reduced majority of sixty-six in the House of Commons. Nevertheless, it could expect to govern without difficulty for a full parliamentary term. Despite the loss of seats, the general election (and the British electoral system) confirmed Labour as the dominant party within British politics. The outcome owed much to relatively small shifts in support between the

[83] See Mark Wickham-Jones, "From Reformism to Resignation and Remedialism?" *Journal of Policy History* 15 (2003): 26–45.

[84] David Marquand, *The Progressive Dilemma* (London: Hutchinson, 1999), 18.

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opposition parties. It is by no means immediately obvious what role signaling played in the contest. Labour had, after all, governed for eight years, a period in which it had set an agenda and sought to develop an identity. It is manifest that signals will be more important to a party in opposition than to one in government. The Blair administration had also initiated some controversial policy initiatives at home on health (foundation hospitals) and higher education and abroad (Iraq), which appeared to mark a break with the Party's past commitments and which arguably, at any rate, were unpopular with swathes of its membership as well as with many within the electorate. It is also apparent, however, that the Party's signals had become less coherent and consistent. Backbench rebellions and frequent disquiet damaged perceptions of unity and discipline. Most notably, uncertainty marked the future plans of Prime Minister Blair, an ambiguity worsened by his long-running feud with Chancellor Gordon Brown. For some, commentators and voters alike, the shifts in trajectory raised questions over the Party's past signals, especially those of Blair. Much popular press reporting claimed that he could no longer be believed—in effect, he was a "mimic," and his signals should not be trusted.[85]

New Labour's electoral success in 1997 is easily understood in terms of policy change and the importance of meeting popular preferences. The Party's trajectory is redolent of a Downsian approach. Indeed, one of Downs's concluding propositions is that should parties suffer calamitous defeats, "they [should] change their ideologies to resemble that of the party which defeated them," exactly the type of path apparently taken by Labour.[86] But in an earlier, somewhat tangential passage, he notes the dilemma involved in such a course. A rational party must meet voter preferences, but, equally, such programmatic change can appear hopelessly unreliable (that is, inconsistent) and so damage the organization's integrity: "If a party frequently adopts new policies inconsistent with its old ones, voters will suspect that it cannot be trusted to carry out any long-range policies at all."[87] Downs does not address this quandary in depth. Rather, he indicates that rational actors will not make such a mistake in the first place: knowing the consequences of such a situation, politicians will be compelled by party competition to be honest. Yet for whatever reason (perhaps a reflection of the severe and prolonged economic crises of the 1970s and the poor signals offered by the Party, as much as underlying policy errors), Labour found itself in such a position in the early 1980s. Attaining credibility and trust required more than integrity (a sense that the party could be believed), because it involved issues of competence regarding goals that might

[85] See, for example, David Remnick, "The Real Mr Blair," *The Observer*, 1 May 2005; see also Margaret Scammell and Martin Harrop, "The Press Still for Labour, Despite Blair," paper, Elections, Public Opinion and Parties Annual Conference, Political Studies Association, University of Essex, 9–11 September 2005.

[86] Downs, *An Economic Theory of Democracy*, 300.

[87] Ibid., 109.

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not have been attainable. The focus provided in *The Rise of New Labour* by Heath and his colleagues upon policy differences, the impact that measures can have, and, above all, on the credibility of politicians provides a significant corrective to the orthodox Downsian-style account of New Labour's success. It would be wrong to assume that Tony Blair's electoral strategy represented a crudely Downsian one. The events of September 1992 (when the UK was forced out of the ERM), as well as those of 1994 (Blair's accession to the Labour leadership), marked a new alignment between party credibility and electoral popularity. By the mid-1990s, Labour had been able to construct a popular program and attain an image as a trustworthy, competent party.

In 1997 and 2001, the signals offered by the Labour leadership to the electorate were of paramount importance. The Party organized focus groups as the basis on which signals targeted at particular segments of the electorate (previous defectors, abstainers, and so on) could be constructed. Signaling, the process by which the Party's intentions were communicated to the electorate—and not the details of policy proposals themselves—was therefore a central aspect of Labour's electoral revival under Blair. It is, however, an aspect of electoral strategy that has received scant attention from many scholars of British politics and from Labour politicians alike, who focus, in an orthodox rational-choice fashion, on the content of the Party's program.

Whether the success enjoyed at the 1997 and 2001 general elections can be sustained, however, is another matter. The outcome of 2005 must raise some doubts. In office, credibility and trust depend upon results as well as promises and signals. At the time of this writing, the outlook for the British economy is not quite as healthy as it has been: state overspending has raised questions about the general state of public finances and whether revenue will be sufficient to cover Labour's ambitions for the expansion of public services. Successive forecasts for the public sector borrowing requirement have ratcheted upwards, indicating that future tax increases, anathema to many within New Labour, might be necessary. Neither cuts in public services nor increases in taxation are palatable. Any impact on popular preferences is uncertain. The government has redefined the rules governing economic policy—thus raising questions about the sincerity of its past signals—a redefinition that has been publicly questioned by the Governor of the Bank of England, among others. The Party's electoral success, thus far based on economic foundations, is by no means secure.*

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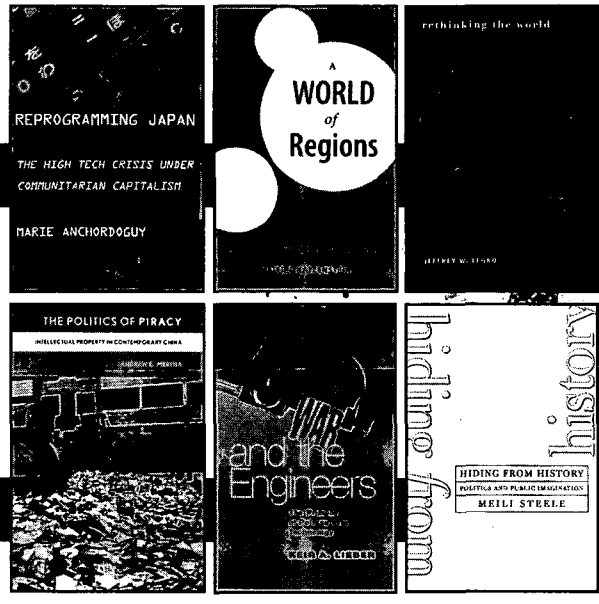

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Book Reviews

Racing the Enemy: Stalin, Truman, and the Surrender of Japan *by Tsuyoshi Hasegawa. Cambridge, MA, Belknap Press of Harvard University Press, 2005. 432 pp. $29.95.*

Few issues in twentieth-century international history are more contentious than those surrounding America's dropping atomic bombs on Hiroshima and Nagasaki. Most studies concentrate on the United States or Japan; Tsuyoshi Hasegawa's signal contribution is to add the crucial third element—the role of the Soviet Union and its entry into the war. The whole ugly picture emerges much more clearly when one focuses on this piece of the puzzle. Hasegawa shows that Stalin systematically deceived Japan in order to delay the Japanese surrender and give himself time to enter the war and collect the prizes that had been promised him at Yalta (and a bit more as well); and he argues that it was the shock of the Soviet attack even more than the dropping of the A-bombs that strengthened the hand of the peace party in Tokyo and produced the surrender. At the end, he nicely summarizes many of his arguments by examining a series of counterfactual questions dealing with choices that might have accelerated or retarded the process.

American, Japanese, and Soviet choices and strategies interacted in complex ways. Each was trying to out-guess and out-game the others. The two crucial sides of the equation were whether the United States would modify the demand for unconditional surrender and what terms Japan would be willing to accept. Neither country was united, and the factional fighting was particularly fierce in Japan. Both sides of the equation were deeply affected by the atomic bomb and by the anticipation of what the Soviet Union would do. Harry Truman and his colleagues sought above all to avoid the need for an invasion of the home islands, which they knew would be terribly bloody, but they simultaneously wanted to maintain their demands. In retrospect, it seems puzzling that the United States did not move more quickly to reassure the Japanese that the Emperor could retain his throne, but the leading members of the Truman administration thought that doing so would make it harder to eradicate Japanese militarism; they were concerned also about American public opinion and, even more, were driven by their desire to avenge Pearl Harbor, Hasegawa argues (pp. 143, 212, 234, 291).

Although they did not consider reneging on their Yalta pledges, the Americans did hope to avoid Soviet involvement. The atom bomb seemed to be the

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way to square this circle, to force Japan to surrender quickly without weakening the American demands. At one point, Hasegawa goes so far as to say that Truman held to the demand for unconditional surrender because he "needed Japan's refusal to justify the use of the atomic bomb" (p. 292). But nothing in his book supports this claim, and on the next page he gets it right: "The atomic bomb provided [Truman and his top advisors] with the solution to previously unsolvable dilemmas" (p. 293). Of course, it did not entirely work: Stalin entered the war a bit sooner than expected and kept his troops moving even after Japan said it was ready to surrender. Among other things, Stalin needed 640,000 Japanese prisoners to work in labor camps in Siberia. Although Truman and Secretary of State James Byrnes did expect that by ending the war quickly, the use of the A-bomb would limit Soviet influence in East Asia, they did not see it as a means of intimidating the U.S.S.R. And although Stalin was deeply disturbed about the American nuclear program (which, of course, he knew about through his spies), the actual use of the weapons seems to have had little effect on his perceptions of American intentions. Probably more alarming to him was the fact that the United States and Britain issued the Potsdam ultimatum to Japan without consulting him on its terms, as he had expected.

Of course, the crucial players were in Tokyo, and although Hasegawa's story here follows basically familiar lines, he adds detail and stresses the central role of expectations of Soviet behavior. Even after the Japanese military realized that they could not win the war, many clung to the hope of fighting a battle that would so bloody the Americans that they would agree to lenient terms. At this point, the lines between the peace and war factions were not sharply drawn, with some individuals like Prime Minister Suzuki vacillating; and the crucial question came down to exactly what aspects of the emperial system had to be maintained. In the end, the Emperor himself decided on a narrow definition, preserving himself and his family while sacrificing the privileged status of the military and his relationship to it.

The book is well-written, and the frequent headings help the reader through the complex narrative. Although political scientists might call for more explicit analysis of theories, and those interested in bureaucratic politics may prefer Leon Segal's *Fighting to a Finish* (Cornell University Press, 1988), for deep historical research in three languages and balanced judgments, *Racing the Enemy* is likely to remain the best book on the subject for many years to come.

ROBERT JERVIS
Columbia University

Judgment Days: Lyndon Baines Johnson, Martin Luther King, Jr., and the Laws that Changed America *by Nick Kotz. Boston, Houghton Mifflin Company, 2005. 544 pp. $26.00.*

During the past several years, both Lyndon Baines Johnson and Martin Luther King have received extensive treatment from journalists and historians. Author

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Nick Kotz adds to this long list of books, his mission that of thoroughly examining the relationship between the two men and their struggle for meaningful civil rights legislation during the stormy years of the mid-1960s. The masterful narrative that Kotz crafts provides gripping reading and deservedly belongs on the "must read" shortlist of books about these men and the era. Kotz makes the most familiar aspects of the story seem fresh; even more, as he weaves his narrative, he provides new stories and startling details about the people and events at hand. He does so through deft and extensive use of over 150 oral histories and interviews, newly released LBJ tape recordings, FBI files, and judicious use of the large secondary literature.

Kotz covers the four and one-half years from the assassination of John F. Kennedy to that of King. He fills the pages with blow-by-blow accounts of the efforts to push through the major civil rights laws of the Johnson presidency: the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Civil Rights Act of 1968, with its fair-housing provisions. In doing so, he skillfully provides the context of the era, from Mississippi to Watts to Selma to Vietnam. Kotz has an enviable ability to bring to life the actors in this drama, including not only his two main protagonists but also congressional leaders and the men and women marching in the streets. Indeed, Kotz excels at unearthing the motivations and manipulations of the players in this very human drama.

Kotz offers sympathetic portraits of Johnson and King, not ignoring the foibles and complexities of these men, even as they emerge as heroic champions of the maltreated. Interestingly, King the moral leader emerges as much more of a strategist than he typically does, while Johnson the master manipulator comes across as deeply committed to the social justice of ending discrimination and poverty. Yet although the two men made compact to advance the civil rights agenda, theirs was never a warm relationship. Even as the huge victories of 1964 and 1965 reverberated, King was expanding his vision outside the South and beyond segregation. When he finally broke with Johnson over the Vietnam War, the two men remained sadly distant even as they often fought for the same goals.

Hovering as the most threatening menace to these men's relationship and the successful passage of what Kotz clearly—and properly—sees as necessary and valuable legislation is not so much the usual suspects, segregationist Southern Democrats, but FBI Director J. Edgar Hoover. There is nothing new in Hoover coming across as a villain, but in these pages, the pure malevolence of the man startles one anew. Kotz's use of FBI sources here deeply enriches the tale even as Hoover's actions anger and offend.

With so much that is good about this book, one only wishes that Kotz had hit his mark from the start, avoiding overheated passages such as "These two were the indispensable leaders, in the right place at the right time . . . . Without the synergy they created together, the outcome of the civil rights revolution would have been very different" (p. xi). Consciously or not, this framing also pushes into a secondary role much of the recent history that has

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brought to the fore the importance of local efforts and grassroots struggles. Those stories are not left out here, but serve mostly to support the roles of the leading actors. But Kotz's story is that of these courageous leaders and their fight for critical legislation, a tale he tells extraordinarily well.

JAMES H. MERIWETHER
California State University, Bakersfield

Inside the Mirage: America's Fragile Partnership with Saudi Arabia *by Thomas W. Lippman. Boulder, CO, Westview Press, 2004. 390 pp. Cloth, $27.50; paper, $17.50.*

Thomas W. Lippman is rare among American journalists. Rather than collecting anecdotal factoids, he undertakes extensive travel and exposure to a particular topic before analyzing his subject in a cogent volume that earns authority. As a veteran reporter for the *Washington Post*, with serious knowledge of the Middle East, oil, and energy matters, as well as national security, he is eminently qualified to decipher the "mirage" that is Saudi Arabia. In the aftermath of September 11 and amid the deeply flawed analyses that now flood academia as well as the media at large, Lippman's gaze inside the Kingdom is a breath of fresh air.

This well-written study, peppered with keen insights, provides a solid introduction to Saudi Arabia. It discusses how our desire to gain a foothold over Arabia's oil resources has motivated successive private and public sector officials to forge semi-permanent alliances with the Al Saud since 1932. For the erudite Lippman, these initiatives came about for the sake of convenience, rather than as a result of any political or cultural affinity. In fact, and as the subtitle of the book indicates, the relationship has almost always been superficial. Our bargain with Arabia was for oil (later conveniently supplemented by petro-dollars and arms sales) rather than as a result of cultural bonds that forged close ties between our two peoples.

To his immense credit, Lippman masterfully deciphers what changed in Saudi Arabia and, to a lesser extent, how America essentially abandoned Riyadh after the 2001 terrorist acts. For generations, young Saudi men (as well as a few women) learned to admire American values, adopted some of the American work ethic, and tolerated eclectic "foreigners" working at various Arabian American Oil Company (ARAMCO) facilities throughout the Kingdom. Although the ARAMCO story is well known, Lippman affixes a human dimension to its actions and, more important, demonstrates how the company served as an American model. Toward that end, he correctly identifies ARAMCO excesses—pretending that Saudi oil was in reality "ours" to dispose of as we wished because we helped discover it—while clarifying its more enduring legacies, including the empowerment of an entire pro-American Saudi generation. In an equally courageous move, Lippman tackles thorny policies that transformed this pro-American legion as it became less enamored with America, but not with its enduring values.

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The author persuasively argues that the Saudi preference to import American technology while rejecting our sociopolitical norms may well have contributed to the current schism. Lippman posits that by encouraging the spread of and reliance on religion, the Saudis preserved short-term stability while planting the seeds of extremism. In turn, the author reasons, these preferences challenged the status quo within Saudi Arabia. The major test came in 1979, when extremist elements took over the Makkah Mosque and, according to then-U.S. Ambassador Richard Murphy, the Al Saud decided that "no one would outflank them on the right" (p. 210). Although the Al Saud were awakened by this epoch-making episode, scores of religiously inclined men sought protection and salvation under the Islamic cloak.

Few Americans—out of ignorance as well as convenience—ever felt comfortable broaching the critical religion question about Islam and its growing politicization. The American-Saudi oil-for-security compact skirted a cultural divide, because both sides were satisfied with superficial links. Washington was pleased when Riyadh cast its "lot with the United States" (p. 279), pumped as much oil as possible to meet the growing Western appetite, and overlooked policy excesses. Riyadh, for its part, bore equal responsibility for this divide because it categorized the United States as a morally wanting society, although the latter's military might was deemed useful against reactionary Arab and Muslim States.

Lippman concludes his study with an honest assessment of the post-September 11 relationship between the United States and Saudi Arabia. He quotes several Saudis who realize that fanaticism is their greatest enemy and who correctly identify education reforms as the highest priority. He further analyzes how political reforms will alter critical internal checks and balances between Saudis and their rulers. Even as he quotes former U.S. Ambassador Charles Freeman—revealing that "the Kingdom's slogan should be 'Progress Without Change' [allegedly] because that seemed to be the objective" (p. 313)—Lippman recognizes the tremendous strides made by successive Saudi rulers in propelling an ostensibly tribal society into the modern era. The author's subtle discourse, at times incredulous but more often admiring, reveals a sense of amazement at what has been accomplished, and especially at how the Saudi–American relationship served the latter's imperial interests. Nevertheless, for Lippman as for others, the time may well be at hand to forge a new alliance that builds on oil for security, one that avoids fear, fosters tolerance, encourages entrepreneurship, and enriches the cultural heritage of both America and Saudi Arabia.

JOSEPH A. KÉCHICHIAN
Pepperdine University

Enforcing the Peace: Learning from the Imperial Past *by Kimberly Zisk Marten. New York, Columbia University Press, 2004. 208 pp. $27.95.*

Few issues have received as much attention in the post-Cold War study of international security as nation building. From Bosnia and Kosovo in the

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Balkans to Afghanistan and Iraq after 11 September 2001, scholars and analysts have sought to identify the keys to successfully stabilizing and rebuilding war-torn societies.

Kimberly Zisk Marten's *Enforcing the Peace* approaches this topic by comparing post-Cold War efforts at "complex peacekeeping" with the liberal democratic imperialism of the previous two centuries. Marten's central argument is built around the two key dilemmas facing any occupying power today, whether it be the United Nations or individual states. First, intervening powers want to exert control over societies without appearing imperial. The appearance of imperialism is likely to alienate the occupied population and lead it to resist any efforts at political, economic, or social reconstruction.

Second, the need to appear legitimate forces states today to embrace multilateral peacekeeping operations, but multilateralism introduces its own problems. The involvement of multiple actors in contemporary peacekeeping operations ensures a variety of conflicting interests. To succeed, Marten argues, the United Nations and the individual states that comprise it must devise solutions to these dual challenges.

Marten develops these arguments in a series of chapters that both delineate the contemporary challenges of peacekeeping and compare these challenges to those of the previous era of liberal democratic imperialism. Although imperialism and contemporary peacekeeping share some similarities, Marten argues, there are also several critical distinctions between the two. Whereas imperialism was often extractive and did not require any appearance of multilateralism, today's peacekeeping is focused on reconstructing societies in as expedient, legitimate, and humane a manner as possible.

The book concludes by suggesting practical ways in which peacekeeping can be transformed to make it more effective. More specifically, Marten argues that a more modest goal of "security-keeping" is more likely to succeed than the typically ambitious goals of complex peacekeeping. It is difficult to impose a political system on another state, especially when several different states are involved in the operation and those states may lack the political will to endure a lengthy and costly operation. Intervening forces would be well advised to focus instead on the modest goal of creating security so that an indigenous government can establish itself.

Marten's prescription is a wise one, even if she perhaps underestimates its difficulty. While "just" creating security may seem like a more modest goal, it is perhaps the most difficult of goals to accomplish. Even in providing security, "security-keepers" may be seen by some elements within a state as having taken sides, and this may only generate resistance to whatever indigenous government attempts to establish itself. Further, one may ask whether long-term stability is possible without achieving the more ambitious goal of creating a sustainable political system.

Finally, the book is generally stronger on the contemporary cases than on the historical cases of imperialism. One will learn a lot more about Bosnia,

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Kosovo, and East Timor by reading this book than one will learn about British or American imperialism. In fact, it is conceivable that Marten's analysis of the contemporary cases could have stood on their own without the comparisons to liberal imperialism.

In short, Marten offers an invaluable analysis of the challenges of contemporary peacekeeping. Given the continuing efforts at post-conflict reconstruction in Iraq and Afghanistan and the widespread identification of "failed states" as a challenge to be confronted by the international community, it is likely that these types of post-conflict operations will continue to be with us well into the future. Anyone contemplating or participating in such an operation would be well advised to read this outstanding book.

DAVID M. EDELSTEIN
Georgetown University

Leaders and Their Followers in a Dangerous World: The Psychology of Political Behavior *by Jerrold M. Post. Ithaca, NY, Cornell University Press, 2004. 302 pp. $29.95.*

In the modern strategic context, defined by the current war on terror, scholars and policy makers alike have focused renewed attention on the power and appeal of particular personalities, including Saddam Hussein, Osama bin Laden, and Kim Jong Il. Drawing on over three decades of experience as the founder and leader of the Central Intelligence Agency's Center for the Analysis of Personality and Political Behavior, Jerrold Post seeks to understand and explain the dangers posed by destructive charismatic leaders. Although sections of this book have been adapted and updated from some of Post's earlier writings, this volume represents the first comprehensive integration of a number of important strands of analysis. Combining research on aging, leadership, stress, group behavior, terrorism, and personality, Post draws on psychoanalytic, social psychological, developmental, and clinical theories to delineate the influence of powerful leaders over vulnerable followers.

Post argues persuasively for the critical importance of the individual leader in determining the fate and direction of his followers. But he introduces two critical and subtle factors into this larger argument. First, and most important, leaders do not exist in a vacuum; they both influence and are influenced by the nature of their followers. Post's sophisticated examination of the nature of followership represents one of the first serious efforts to deal with this facet of leadership in a systematic way. Specifically, Post makes a compelling argument that charismatic leaders, especially those he characterizes as "mirror hungry" (pp. 191–194), in that they crave constant adulation, find a unique transferential lock in the "ideal hungry" (pp. 191, 195) follower, referring to those individuals who seek idealized versions of themselves in their leaders. Post posits that each needs the other to survive and flourish. Much of Post's book seeks to

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illuminate the way in which "the psychology of the leader . . . , like a key, fit[s] and unlock[s] certain aspects of the psychology of [his] followers" (p. 188).

Second, Post suggests that stress, either personal or societal, can serve to push ordinarily normal leaders and followers into the realm of temporary pathology. In other words, otherwise-healthy leaders who may have narcissistic or paranoid tendencies can, in times of crisis or stress, develop characteristic distortions in their cognitive style and functioning. As Post writes, "To the extent that individuals do have significant compulsive, narcissistic or paranoid elements in their personalities (as many successful individuals do), under stress these traits can be expected to magnify" (p. 106). This hypothesis certainly finds support in the psychological work of Walter Mischel, who has demonstrated that individuals under pressure tend to revert to their preferred mode of behavior, which can often be aggressive in nature. Similarly, work on Prospect Theory indicates that individuals confronting loss appear more prone to take risks.

Post richly illustrates his central arguments with a host of case studies of fascinating individuals with diverse disturbances. These political psychology personality profiles are based on a variety of sources, including biographies, press conferences, and interviews. They examine the individual's family and educational background, important social relationships and mentors, ideological beliefs, and psychological coping mechanisms. *Leaders and Their Followers* contains brief profiles of many leaders, including Anthony Eden, Ferdinand Marcos, the Shah of Iran, and many others, illustrative of their particular problems in leadership, including illness and addiction. It also includes more-extensive profiles of Osama bin Laden, Slobodan Milosevic, Fidel Castro, Saddam Hussein, and Kim Jong Il. This book will prove engaging and enlightening for anyone interested in the nature, quality, and context of leadership.

ROSE MCDERMOTT
University of California, Santa Barbara

Real Democracy: The New England Town Meeting and How it Works
by Frank M. Bryan. Chicago, University of Chicago Press, 2004. 320 pp. Cloth, $49.00; paper, $19.00.

This is the story of the life and life's work of an accomplished scholar, a master teacher, and most of all, a Vermonter. It tells how one man grew up to citizenship in a very special place and came to love the direct democracy that was his legacy there. Inspired by what he saw and experienced, he set out with his students' help to discover the essence of this democracy and to tell others about it.

The result is the best book I have ever read on local government. It is, in unequal parts: careful consideration of democratic theory; exploration of a great range of germane empirical work; very rigorous, original quantitative research; vignette; personal diary; and handbook on engaging students in real social science. The writing, often in the first person, is direct and consistently engaging. The social science—especially in the construction of indexes to

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measure the phenomena under study—is creative and imaginative. And I have rarely seen the results of systematic quantitative research so clearly and accessibly explained.

Over more than a quarter of a century (1970 to 1998), Frank Bryan and his students regularly attended annual meetings in towns of different sizes across Vermont and systematically recorded levels of attendance, procedures, characteristics of participants, and types and levels of participation. From this effort, Bryan obtained useful data on 1,435 town meetings in 210 towns. With these data, he successfully demonstrates that size of place is the critical factor in ensuring the vitality of local democracy, as measured by levels of attendance and the extent and nature of participation in town meetings.

After controls are entered for the structure of meetings, the socioeconomic and partisan character of communities, and the nature of the issues before them, town size persists as the most important variable in explaining the proportion of population in attendance: the smaller the town, the greater the proportion. Night meetings (with limited time available), the use of the Australian ballot (removing the necessity to be present to have an effect), and bad weather diminish attendance and participation. Small number of people at meetings, and longer meetings make for the greatest amount of participation and the widest distribution of participation among those in attendance. "Increased town size hurts real democracy in two ways," Bryan writes. "First . . . it dramatically reduces the percentage of citizens who attend town meetings. Second, town size increases the number of citizens who attend, which dramatically reduces the percentage of these attendees who participate"(p. 167).

Women generally participated less in the meetings that Bryan and his students observed, although their level of participation rose over time, notwithstanding the greater recent presence of factors (for example, night meetings) that tended to dampen participation. And when few women were at a meeting, active engagement of those who were present was likely. Issue-based conflict, Bryan found, also enhanced meeting participation. But here he acknowledges that more work is needed. His report that small-town conflict was most often about policy, broadly defined, is not convincing. At least in rural New York, personalities and even, sometimes, ideology divide communities as much as or more than policy does.

Frank Bryan knows that "the heart of democracy is found in our localities: our towns, counties, parishes and boroughs" (p. 296). What is it about smallness that enhances democracy? Smallness nurtures connectedness between person and place, allows each person to be significant, and enhances respect—Bryan calls it "humility" and "forbearance"—each person for the other. How different this is from the formalistic requirements of equality that we have devised for bigger places—"one-person-one-vote"—requirements that override community and, in the end, almost certainly diminish democracy.

GERALD BENJAMIN
SUNY, New Paltz

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Freedom Reclaimed: Rediscovering the American Vision *by John E. Schwarz. Baltimore, MD, Johns Hopkins University Press, 2005. 243 pp. $30.00.*

John Schwarz's book offers a unique defense of contemporary liberal policies regarding the regulation of wealth in America. Whereas earlier liberal theorists understood the Founders' conception of freedom and rejected it as inadequate, Schwarz argues that his blueprint for ensuring "social equality" is actually meant to realize the original understanding of freedom. The Founders' belief that all individuals are by nature equally free and independent, according to Schwarz, means that "each individual must be free to decide on his or her own course of action, free from unwanted external restriction, consistent with every individual having an equal freedom" (p. 178). The Founders also believed, Schwarz writes, that individuals have a right to enjoy *equal dignity* and that government has a duty to protect this right. As evidence for this claim, Schwarz cites James Madison's belief that the "moral principles of liberty that endow a person with the right to claim and acquire property at the same time oblige that person to respect every other person's equal right to do the same" (p. 15). From this Schwarz concludes that the Founders envisioned a society of "relative economic equality," in which everyone has the degree of property or wealth adequate "to sustain an individual in dignity" (p. 31).

Schwartz writes that in the nineteenth century, however, Americans deviated from the Founders' "ideal of freedom" by adopting a "free-market perspective on liberty" (p. 32) that left individuals at the mercy of under-regulated corporations. The result, he writes, is that America's history has been one of continuous oppression by the wealthy and disenfranchisement of the poor. The problem with the unequal distribution of wealth, according to Schwarz, is that wealthier Americans enjoy greater freedom than relatively less-affluent Americans, because they are not as constrained in their choice of actions by a lack of property or "resources." Even though the free-market view of liberty has allowed most Americans to become "materially better off" (p. 38) than any other people in the world, the inequality that exists between the wealthy and the less-affluent in society leaves the latter feeling socially inferior and "impoverished" in their sense of dignity. To rectify this situation, Schwarz argues, and thus reclaim the Founders' vision of equal freedom, dignity, and independence, government must ensure that all citizens have an *equal ability* to exercise their freedoms by providing necessary resources to those who lack them and by limiting the more affluent in the use they can make of the resources they already possess. This would require government to regulate and manipulate the distribution of wealth in society by mandating how corporations can manage their affairs.

Schwarz bases his argument on a handful of carefully selected statements by Thomas Jefferson, James Madison, Thomas Paine, and John Locke. However, contrary to Schwartz's claims, these men understood that inequality

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between individuals will necessarily result when government fulfills what they regarded as its proper duties, the first of which, according to Madison, is to protect the "different and unequal faculties" that lead to "the possession of different degrees and kinds of property" (*The Federalist, No. 10*). Madison opposed the kind of micromanagerial regulation proposed by Schwarz, and wrote that "commercial shackles are generally unjust, oppressive and impolitic" and that "industry and labour [ought to be] left to take their own course" (Speech to House of Representatives on Import Duties, 1789). This is also what Jefferson meant when he said that "a wise and frugal Government . . . shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned." This, Jefferson believed, "is the sum of good government" (First Inaugural).

CHRISTOPHER C. BURKETT
University of Dallas

Tides of Consent: How Public Opinion Shapes American Politics *by James A. Stimson. New York, Cambridge University Press, 2004. 206 pp. Cloth, $55.00; paper, $16.99.*

Public opinion counts. It is the "drive wheel" of American politics. But what counts most is public opinion *change*. When opinion changes, it signals that something matters. This is the message of much of James A. Stimson's earlier work, and *Tides of Consent* advances his thesis further, this time for a general audience who wants to understand more about how opinion dynamics drive politics. But scholars and their students will find much to appreciate as well in this clearly written and engaging book, filled with interesting time series data and colorful examples about politicians and campaigns we all remember.

How does public opinion move over time? What moves it? Why does it move? What explains the movement? Stimson attacks these questions systematically. As in his earlier analyses, he reports that overall opinion on New Deal welfare state issues (education, health care, cities, the environment, race, welfare, and taxes) moves *opposite* to the direction of the party of the president. When Republicans are in charge, opinion grows more liberal; when Democrats are in charge, opinion grows more conservative. This is because parties define the liberal and conservative poles of politics in the United States, and thus Americans have to choose in elections between a party of the right and a party of the left. But some are not satisfied with what they get and so respond by soon expressing a view contrary to whatever direction is taken. Critics may disparage this as gross overgeneralization, but Stimson describes these long-term flows of opinion as "the backdrop of American politics" (p. 95), not what literally dictates exact enacted legislation at any one time.

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He next examines opinion movement over the course of political campaigns. Whether campaigns matter relates, in part, to whether they have to do with reelection landslides of incumbents who were popular in the year preceding the election, or with more closely contested elections. The former are characterized by relative constancy over the election year, the latter by systematic movement. Clearly, opinion movements point to the fact that campaigns matter. But what exactly causes opinion movement? Of the repeatable phenomena that can be observed—nominating conventions and candidate debates—it is nominating conventions that affect winning and losing. They energize their supporters, unite the factions within parties, and provide opportunities for intense political learning. The presidential debates have little impact.

The third set of public opinion movements that Stimson examines is support for senators, Congress, and governors between elections. Using trends from 1981 to 2000, he finds that the absolute levels of support vary but that the underlying patterns rise and fall similarly. The underlying dimension is economic confidence. Thus, it appears that the public makes their decisions based on how well they think things are going in the country economically.

The final question is who accounts for most of the opinion changes. Stimson's answer is that the citizens who produce opinion changes are a group he calls "scorekeepers." It is not "the passionate" or "the uninvolved" who change much in their views about issues and about which party should govern. Instead, it is these scorekeepers—nonideological, dispassionate pragmatists who see politics as based on making a decision about who can do a better job, not on ideology. A partial answer to Stimson's subhead, *How Public Opinion Shapes American Politics*, is that, despite considerable individual ignorance in, and inattention from, "the uninvolved" and considerable rigidity from "the passionate," a substratum of Americans are attentive to outcomes and "sit on the sidelines as judges" (p. 168) caring about performance. Without intense partisanship and ideology, they are willing to change their minds.

Stimson believes that the most important thing in American politics is public opinion but says we have only "scratched the surface" in understanding opinion movement (p. xvi). His work has done much more than scratch the surface, and in *Tides of Consent*, he accomplishes his goal of making his research accessible to a broader audience than he has reached before.

FAY LOMAX COOK
Northwestern University

The New Transnational Activism *by Sidney Tarrow. New York, Cambridge University Press, 2005. 280 pp. Cloth, $55.00; paper, $19.99.*

In recent years, there has been an explosion of scholarly literature on social protest. Why? Probably, like Hegel's owl of Minerva, it is a response to the surge of protest that has occurred since the 1960s, notably, the civil rights, student, and antiwar movements in the United States, the May 1968 movement in France, the

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"hot autumn" of 1969 in Italy, and human rights and pro-democracy movements directed against authoritarian regimes in Latin America, east central Europe, and Asia.

Among the most influential and authoritative analyses have been Sidney Tarrow's *Power in Movement* (Cambridge University Press, 2nd ed., 1998) and his *Dynamics of Contention* (Cambridge University Press, 2001), co-authored with Doug McAdam and Charles Tilly. Tarrow and his associates challenged approaches that regard social protest as an irrational outburst of anomic, rootless individuals; a mechanical response to structurally generated causes; or a product of rational cost-benefit calculation. Instead, they highlight the *politically* constructed character of social protest. Their approach focuses on how key actors seek to develop resonant frames within which to identify grievances, select propitious targets and venues through which to press demands, and broker networks and alliances among disparate groups.

Most research on popular contention within the political process tradition has confined attention to local and national arenas. However, the Seattle protest at the 1999 World Trade Organization ministerial meeting and subsequent protests at other international summits were dramatic examples of transnational activism. Hegel's owl of Minerva has again taken flight, and a cottage industry is now devoted to understanding the causes, character, and impact of transnational activism.

Some key questions immediately arise: How does transnational activism differ from locally and nationally based activism? Is all transnational protest directed against globalization? And has the very distinction between national and international or transnational activism become moot? These are the questions that *The New Transnational Activism* seeks to answer.

Tarrow emphasizes throughout this book how difficult it is to mount transnational protest, especially when it involves durable networks that share a common transnational identity and integrate participants across national borders. He aims to identify the processes and mechanisms that have at times enabled transnational activists (Tarrow calls them "rooted cosmopolitans") to succeed. Underlying the exercise is an attempt to answer the question of whether "we [are] witnessing a short cycle of internationally oriented domestic contention or a fusion between international and domestic contentious politics" (p. 12). (Tarrow sensibly suggests, in a way reminiscent of Chou En-Lai's assessment of the French Revolution, that it is too soon to say.)

In addition to the many scintillating vignettes that make this book a joy to read, its major contribution consists of two moves. First, Tarrow identifies six key processes that may promote transnational activism. Two are rooted in domestic arenas, framing issues for a national audience in a way that highlights their global character and internalizing (assimilating) global issues within the national context. Two are closer to the international arena, framing grievances to highlight their transnational character (he calls this externalization) and constructing transnational coalitions. The final two processes facilitate the

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transition between the national and the transnational, diffusing ideas and demands across national lines and promoting a shift in scale, up or down, from the national to the transnational or vice versa.

Critics of *Dynamics of Contention* have noted that the way in which processes and mechanisms are identified remains underspecified. Likewise for *The New Transnational Activism*. Why these six processes? Why not others? How can one measure their importance in specific situations? Is the process-based approach a preferable alternative to rational-choice theory, covering laws, statistical analysis, or thick description?

Tarrow's second major claim is that one should distinguish between globalization—which denotes transnational economic flows—and internationalization, that is, the triangular political inter-relationships of states, non-state actors, and international institutions. The distinction is intended to challenge the argument that all transnational activism is related to globalization. In his words, "Globalization and internationalization are distinct processes that intersect but cannot be reduced to one another" (p. 19). Examples of activism unrelated to anti-globalization protests include transnational campaigns promoting human rights and environmental protection, opposition to repressive regimes, and protests against U.S. military interventions in Afghanistan and Iraq (p. 203).

Tarrow notes that the distinction between globalization and internationalization is analogous to that between capitalist development and state building. Precisely: although one can distinguish the two analytically, have there been examples in the modern era of national capitalist development without a strong state? If one were to regard the distinction as purely analytical, it might be useful. But it encourages regarding the two processes as empirically distinct. Case in point: Tarrow's claim that "the campaign against the Iraq war had little to do with globalization . . ." (p. 17). This characterization ignores a principal argument of the protestors: "It's all about oil." (Note that emphasizing that economic and political aspects of globalization are related does not require accepting that every problem in the world is caused by globalization.)

The New Transnational Activism is a magisterial account, a worthy successor to Tarrow's previous contributions to our understanding of social protest. Scholars will apply—as well as challenge—the many specific claims he makes. But this book will doubtless frame our thinking about transnational activism for years to come.

MARK KESSELMAN
Columbia University

United We Stand? Divide-and-Conquer Politics and the Logic of International Hostility *by Aaron Belkin. Albany, State University of New York Press, 2005. 161 pp. $60.00.*

"Even military regimes must protect themselves from their own forces" (p. 32). This assertion is the pivot for the two propositions Aaron Belkin posits in *United*

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We Stand. First, most coup-vulnerable regimes choose to pit their various military and security organizations against each other (counterbalancing) to protect themselves from their own militaries, and a counterbalancing strategy prompts states to engage in international conflict to perpetuate divisiveness within state instruments of force. Belkin presents, first, a theoretical argument linking a leader's susceptibility to military coups to counterbalancing forces and, then, the logic leading from a counterbalancing strategy to international conflict. Chapter 4 (co-authored with Evan Schofer) provides a statistical analysis of both theoretical propositions. The quantitative evidence is further bolstered by two case studies: Syria and Georgia. *United We Stand* straddles civil–military relations, organization theory, and international relations, presenting counter-intuitive ideas on the relationship between civil–military relations and conflict and, for that reason, is well worth reading.

Aaron Belkin presents and then tests two theoretical arguments. The first is that in states where regimes are vulnerable to coups, "leaders usually create rival military organizations to check and balance each other and protect the regime as a byproduct of their independent coercive capacity" (p. 19). This is what he refers to as counterbalancing: "the establishment and management of a network of military organizations that is rich in structural holes" (p. 38). Of the eight different "coup-proofing" strategies Belkin enumerates, including "professionalizing" and "remunerating," he contends that counterbalancing is the most reliable because it is the only one that relies on pitting force against force rather than on suasion (p. 29). So although leaders may use more than one of these strategies, they often find themselves driven to employ counterbalancing as well.

The second contention is that "counterbalancing can provide an incentive for vulnerable leaders to engage in international conflict to the extent that it facilitates divide-and-conquer politics at the domestic level and promotes competition among various domestic armed forces" (p. 40). Belkin does not argue that regime vulnerability causes international conflict per se; instead, the counterbalancing strategy is the key, moving from the dependent variable in the first proposition to the independent variable in the second. This highlights the two primary factors that differentiate Belkin's work from the rest of the literature. Belkin does not rely on regime type as an explanatory variable. Of even greater import, he argues in direct opposition to the commonly accepted "rally around the flag" notion that leaders use international conflict to unite their states. According to Belkin's thesis, leaders engage in conflict precisely because of its ability to divide the military.

United We Stand tackles a vitally important topic and reaches a startling conclusion. Unfortunately, it is simply too short and suffers some flaws related to its brevity. For example, Belkin's theoretical argument linking coup vulnerability to a counterbalancing strategy seems tautological at first glance. It is not until two chapters later, when he operationalizes coup vulnerability in order to test the proposition, that he clears up this point. Likewise, counterarguments

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and alternative coup-proofing strategies are dismissed too readily, which undermines confidence in both his arguments and his tests. Again, in the interest of space, the book presumes a certain familiarity with the political subfields of civil–military relations, organizational theory, and conflict studies, although Belkin provides just enough explanation that lack of knowledge in one of these areas does not prevent most readers from understanding his arguments or his tests. Belkin has written a book that is very concise, but has sacrificed some development in doing so.

In *United We Stand,* Aaron Belkin offers up some important counterarguments to more traditional thoughts on both civil–military relations as well as the domestic causes of international conflict. Belkin's ideas promise to generate lively and fruitful debate that can only enhance our understanding of the dynamic relationship between domestic and international politics.

STACY BERGSTROM HALDI
Gettysburg College

America's Crisis of Values: Reality and Perception *by Wayne E. Baker. Princeton, NJ, Princeton University Press, 2005. 312 pp. $35.00.*

The 2004 election solidified the central role of values in U.S. political discourse. Although there has been much criticism of the exit polling showing that "moral values" was the number one concern of voters last November, few observers dispute the growing salience of values in American politics over the past several decades. Yet, even as media and political elites have become fascinated by the culture war supposedly raging in America, there has remained a dearth of empirical work that rigorously examines the values of Americans and how their attitudes have changed—or not changed—over time. For this reason, the arrival of Wayne Baker's important book, *America's Crisis of Values: Reality and Perception*, is a welcome development.

Baker may know as much about American values as any scholar working today. The foundation of his book is data collected by the World Values Survey, a vast sampling of public opinion in nations across the globe, including the United States. The key findings of the World Values Survey have been widely disseminated by Ronald Inglehart, most notably through his book, *Modernization and Post-Modernization* (Princeton, NJ: Princeton University Press, 1997). Few scholars now dispute Inglehart's once-controversial hypothesis that as societies become wealthier, they inexorably shed "survival" values in favor of "self-expression" values, as well as exchanging traditionalism for a more secular-rational outlook. Strangely, though, the treasure trove of data in the World Values Survey has not been used much to analyze American values. *America's Crisis of Values* fills a significant gap in the literature—and, although the book was sent to press before the 2004 election, it could hardly be more timely.

The title of Baker's book is misleading. He argues, in fact, that there is no "crisis" of values. The purpose of the book is to show why the crisis is illusory

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while also explaining why so many Americans perceive a crisis. The turbulent debates about values are fueled by the two arguments that fall apart under Baker's empirical scrutiny. First, he dismantles the view—most strongly associated with conservatives—that there has been a recent decline in traditional values in the United States. "The evidence clearly shows that America is one of the most traditional societies in the world," Baker writes. "Moreover, America's traditional values have remained relatively unchanged over two decades"(p. 62). Second, like other scholars, Baker rebuts the notion of a deeply polarized American electorate, writing that "most Americans share similar attitudes, values, and beliefs"(p. 94). He does acknowledge, however, that there has been more polarization in the "moral visions" of Americans, with more people identifying as either absolutists or relativists.

If there is no crisis of American values—neither a great change in U.S. values nor a dangerous division among Americans—then why the endless hysteria around this issue in political and cultural discourse? Baker's answer is complex and insightful. He argues that the United States is in an unusual historical moment, in which the opposing moral visions of absolutism and relativism are both extremely strong, and that this tension produces the "appearance of maximum disagreement about values and attitudes"(p. 157) even as Americans agree on most social issues. Baker observes also that there is significant incongruence in the values of many Americans, with people holding traditional values while also embracing an emphasis on self-expression. The conflict between these principles creates "cognitive dissonance" and a sense of personal crisis that provokes Americans to "search for meaning."

By Baker's account, the perceived crisis of values is unlikely to disappear any time soon. One can only hope that pundits and politicians will take some time off from waging culture war to read *America's Crisis of Values.*

DAVID CALLAHAN
Demos

Africa Unchained: The Blueprint for Africa's Future *by George B. N. Ayittey. New York, Palgrave, 2005. 512 pp. $35.00.*

George Ayittey has produced a passionate and wholly justified attack on the performance of Africa's heads of state in the forty years since independence. He is angry at the corruption, the subversion of democracy, and the stubbornly misguided economic policies. He even believes that the colonial rulers and chiefs did a better job of governing and would like to see the latter returned to prominence. He certainly is not willing to have colonialism used any longer as an excuse for Africa's parlous condition. He builds his case not with new data or the dry analysis of various sets of statistics but with fluid rhetoric and citations from an exceptionally wide-ranging collection of newspaper cuttings from Africa and elsewhere. This book, then, is symptomatic of the rage that Africans feel at their current condition and at their betrayal by their political leaders.

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There are times when Ayittey makes missteps in the continent-wide sweep of his analysis. For example, he condemns former Tanzanian President Julius Nyerere for, among other things, corruption, political instability (p. 9), and disregard of his "own indigenous African heritage" (p. 29). Ayittey's condemnation of Nyerere for the economic disaster created by his socialist policies is legitimate, but no one knowledgeable in East African politics would fault Nyerere on the first three grounds. Ayittey also has unstinting praise for Africa's traditional leaders and would like to return to their governance (pp. 334–335, 407–409). But he does not confront the critics of chieftancy. (Mahmoud Mamdani's *Citizen and Subject* doesn't even appear in his bibliography.) He also provides us with no analysis of Haile Selaisse in Ethiopia or of contemporary Swaziland, both of which represent traditional governance and neither of which is usually considered a success. Finally, he says, "The World Bank did not understand that the state needed *complete overhaul*, not just piecemeal reform . . . . Back in the 1980s and 1990s, nearly all development models assumed that all Africa needed . . . was a massive infusion of foreign aid or capital" (p. 329). This is a more accurate description of the Bank in the 1970s and ignores the fundamental shift to structural adjustment after the Bank's Berg Report in the early 1980s.

It is interesting and revealing, however, that Ayittey sees a fundamental continuity in African politics and economic policy in the years since independence. The fact that he doesn't acknowledge a different set of economic development issues from the 1980s forward indicates just how weak the impact of structural adjustment really was at the level of day-to-day state behavior. The *indigenous* commitment to state-led development remained dominant despite the best efforts of the Bank.

The problem is what to do about Africa's problems. We can only welcome Ayittey's commitment to African solutions. He finds the New Partnership for Africa's Development unimpressive and hypocritical, in that it endorses African autonomy but calls for foreign aid, and denounces poor governance but adopts a wholly inadequate solution to the problem (pp. 317–323). Ayittey's own strategy relies on the market and on Africa's traditional governance structures, and he wishes to build on rural markets and the informal sector (pp. 369 ff.). But he says that the viability of this model *assumes* that there is a national environment of "peace, order and economic freedom" (p. 368) as well as adequate physical infrastructure. So far, there would be large numbers who agree with him.

How do we get to the good national governance on which his model is predicated, however? He demands democracy, but immediately condemns those new democratically elected presidents who have embraced the corruption they so loudly condemned when they were in the opposition (pp. 330–331). He then says we can abandon the national level and focus on the villages (p. 332), but his village model depends on the fruits of good (even if minimal) national governance. In the end, then, the really difficult problems are still begging for solutions, Ayittey's immense self-confidence to the contrary

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notwithstanding. Perhaps it is enough that he has expressed the continent's frustration and rage.

DAVID K. LEONARD
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China Marches West: The Qing Conquest of Central Eurasia *by Peter C. Perdue. Cambridge, MA, Belknap Press of Harvard University, 2005. 752 pp. $35.00.*

China's history, like that of the United States and Russia, has witnessed expansion and colonization of a frontier. Unlike that of the other two countries, China's expansion has received scant attention from scholars, most of whom have focused on the central core of Chinese civilization. Thus, historians of China have omitted substantial consideration of the influence of outlying regions. In this book, Peter Perdue neatly fills in the gaps and presents a somewhat different Chinese civilization, a multiethnic land shaped, in part, by its relations with foreigners.

China's expansion reached its height during the Qing dynasty (1644–1911), as the court in Beijing came to rule Inner Mongolia, Mongolia, Tibet, and Xinjiang. Perdue provides a comprehensive review of the political circumstances leading to the Qings' successful penetration of the region known as Central Eurasia. Much of this material has been known to specialists, but Perdue supplements this detailed chronology with valuable analyses of the logistics required for the Qings' campaigns, the land policies and military colonies devised to rule some of the newly subjugated territories, and the trade, tribute, and gift relations designed to foster the economic integration of China and Central Eurasia. His descriptions of the ecologies and economies of Central Eurasia yield useful insights for those specialists and general readers who have previously studied Chinese history from an exclusively Chinese perspective.

A particularly appealing feature of the book is his attempt to elicit the viewpoint of the subjugated. Most previous accounts have been based on Chinese sources and have omitted consideration of the objectives of the Central Eurasian people. It is true that non-Chinese sources do not provide the rich detail provided by Chinese sources, and the Mongolian texts are often characterized by a Buddhist worldview and are frequently imbued with an ideological message. Yet a perusal of these sources offers an antidote to the almost total reliance on Chinese writings. Perdue writes that "historical interpretations by Mongols still differed from the official Qing record" (p. 489). By using such sources, he presents a more well-rounded and less China-oriented portrait of the seventeenth- and eighteenth-century struggles that resulted in the creation of a large empire.

Perdue's study is thus a vital broadening of the concept of Chinese history. The only minor defect is its attempt to venture beyond the particular to deal

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with questions of world history and with theories of nomadic empires and of differing Chinese, European, and Central Eurasian models of governance. Such considerations, on occasion, go beyond the evidence he has presented. He offers his refutation of some theories and his embrace of others about world and Chinese history, the development of the state system, and other issues, with descriptions of the views of everyone from Charles Tilly to David Landes to Owen Lattimore to Thomas Barfield. However, despite these asides, Perdue's book is a valuable narrative of China's expansion during the Qing dynasty and its ramifications for Chinese and Central Eurasian history. Harvard University Press should be congratulated on the care with which it produced the book.

MORRIS ROSSABI
City University of New York

The Liberty of Strangers: Making the American Nation *by Desmond King. New York, Oxford University Press, 2004. 229 pp. $29.95.*

In his intellectually provocative book, Desmond King examines tensions between an ideology that promotes a vision of U.S. nationhood based on the inclusion of individual citizens and the persistence of racial, ethnic, and national origin–based groups that appear to threaten a collective national identity. King explores how the U.S. state has sought to reconcile the contradiction between a nationalist ideology that celebrates individual assimilation and a history of denial of rights and victimization of particular racialized communities (most prominently, African American, Native American, Mexican, Puerto Rican, Chinese, and Japanese). In the context of the United States, the term *racialized* refers to the specific categorization of people according to race, and their subordinate placement in a hierarchical system that privileges whiteness.

Traditionally, the ideology of United States nationhood perpetuated the myth that immigrants would shed their particularistic ethnic identities and loyalties. Eventually these "strangers" would be assimilated into a homogeneous body politic that was based on the equality of individual rights. But, as King points out, the process of building nationhood was also characterized by the systematic exclusion of racialized communities. A new, democratic nationalist political culture is being forged that respects racial, ethnic, and national origin group–based distinctions. According to King, the state has resisted persistent pressures from nationalist sectors that seek to erode the salience of group identities. This emerging perspective rejects the notion that diversity is antithetical to the one nation–one people ideology that has shaped the concept of nationhood in this country. This new development is partially a consequence of the U.S.'s assertive global role in promoting democracy. International pressure has compelled the United States to enact domestic social policies aimed at promoting a more-inclusive and democratic polity; its rhetoric on democratization as a universal goal had to be reconciled with its

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practice of limited democracy at home. Foreign criticism of its treatment of racialized communities could undermine the U.S.'s moral authority and credibility in the global community.

King notes that the persistence and intensity of racial, ethnic, and national origin–group identities exposed the melting pot as a myth. Given the futility of eradicating these group-based identities, the U.S. state has structured a nationalism based on a community of groups that share a strong loyalty to the polity. U.S. nationhood is actually an ideology of postmulticulturalism—the recognition of the legitimacy of group distinctions, combined with a national government that enacts policies that "do not accentuate the hierarchical divisions" (p. 167) among racial, ethnic, and national origin groups.

King's thesis generates some intriguing questions. Is U.S. nationalism comparable to the nationalism of Western democracies? Or is U.S. nationhood a sui generis ideology that is the unique historical product of the interplay of immigration, foreign policy, and domestic racialized politics? Will once-ethnically homogeneous Western European democracies have to recast their concept of nationhood, given the demographic reconfiguration their societies have experienced as a consequence of immigration? These questions hint at some conceptual difficulties in King's work. He has not adequately differentiated between groups in terms of their histories of racial victimization. For example, the racial violence sanctioned or tolerated by the U.S. state (at the national and state levels) has historically been more extensive, virulent, and enduring for African Americans, Native Americans, and Mexicans than it has been for European white ethnics. The histories of white ethnic enclaves and racialized communities are remarkably different, but are not treated as such in the book. The consequences of the various exclusionary practices and policies that were based on an enduring racial logic that valued whiteness should be discussed. Admittedly, King is interested in developing an understanding of U.S. nationhood. But it is important not to reify groups into undifferentiated, elementary social/cultural collectivities that resist assimilation. The presumed determination of racial, ethnic, and national origin groups to retain their distinctiveness is much more a function of racialized exclusion and marginalization than it is of any innate disposition to particularism.

PEDRO CABÁN
University of Illinois

Voting the Agenda: Candidates, Elections, and Ballot Propositions *by Stephen P. Nicholson. Princeton, NJ, Princeton University Press, 2005. 208 pp. $35.00.*

Did the issue of gay marriage in 2004 help elect George W. Bush? More specifically, did the initiative banning same-sex marriages in Ohio swing the election in that state, and thus the overall electoral college tally, to Bush? While

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only briefly broaching the subject, Stephen Nicholson's provocative book provides a solid theoretical foundation to explain the role that ballot measures have in setting the agenda and influencing vote choice in candidate races.

Nicholson argues convincingly that ballot measures, which can provide useful information to voters at relatively low cost, can help set the agenda in candidate contests. Measures placed on the ballot by citizens and interest groups are able to alter the electoral environment by setting the agenda and priming vote choice in candidate races by helping to assign greater weight to certain issues than to others. The effects of ballot measures are indiscriminate, he goes on to argue, in that they prime not only the decisions voters make about the issues at hand, but also candidate choice. Furthermore, Nicholson suggests that ballot measures have spillover effects. Although voters may not necessarily link issues on the ballot directly to specific candidates, ballot measures can affect voters' judgments in a variety of candidate races by reinforcing (rightly or wrongly) voters' partisan stereotypes of the issue positions held by candidates. Building on political psychology and communications research showing that candidate choice is often influenced by issue preferences, especially when information about an issue is readily accessible to voters, he argues that the effect of ballot measures is likely to be most pronounced in election contexts in which information is relatively scarce.

Putting his theory of agenda setting and priming to an empirical test, Nicholson provides evidence that ballot measures—from tax limitation, to environmental regulation, to illegal immigration, to affirmative action, to the freezing of nuclear weapons production—have shaped the agendas of candidate races. Using national survey data, he finds that citizens living in states with measures on the ballot between 1988 and 1992 dealing with abortion and, to a lesser degree, taxes and the environment were more likely to say that these issues were important in evaluating congressional candidates than were citizens in states without such ballot measures. More significantly, he finds that in 1982, the issue of nuclear freeze was one of the most important considerations to voters in candidate races in the ten states that had a nuclear freeze measure on their ballots. Although largely symbolic, the initiatives primed voters who supported the issue to back liberal candidates. Controlling for other factors, Nicholson finds the impact of the measures to be significant, irrespective of whether the nuclear freeze issue was openly discussed by candidates, and finds that the issue was largely considered to be irrelevant in states that did not have it on their ballots. In addition, he shows that the various freeze measures helped to set the agenda not only for candidates in U.S. Senate elections but also for those in low-information U.S. House races, and even for those in some gubernatorial contests.

Extending his analysis of the indiscriminate priming effects of ballot measures on candidate races, Nicholson turns to initiative-rich California. He shows how Proposition 187 (a 1994 initiative eliminating social services for illegal immigrants) and Proposition 209 (a 1996 initiative eliminating affirmative action) shaped voters' candidate choices in high-profile statewide races (president,

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governor, U.S. Senate) as well as in some "down-ballot" contests. However, he finds that a salient 1994 California initiative, Proposition 184 (California's "three strikes and you're out" measure), had no statistical effect on the vote choice for either governor or U.S. House.

Given California Governor Arnold Schwarzenegger's recent use of direct democracy to advance his policy agenda and political career, political observers and scholars of direct democracy might question Nicholson's assumption that ballot measures are "often distinct from candidate campaigns and thus offer an opportunity to examine how 'exogenous' issues affect voting decisions" (p. 13). There is considerable evidence to the contrary, suggesting that candidates and parties are heavily involved in ballot measure contests and that citizens, in turn, rely on partisan cues to inform their voting decisions on ballot propositions. As numerous observers have shown, the campaigns for Propositions 187 and 209 in California were very much shaped by the actions (and financial contributions) of party officials and candidates. Indeed, it is possible that the underlying partisan dimension of these ballot measures was central to their priming effects, inasmuch as the issues had overt partisan cleavages and became owned by the candidates and parties.

Nicholson concludes *Voting the Agenda: Candidates, Elections, and Ballot Propositions* with a brief discussion of the normative implications of having candidate races shaped by ballot campaigns. Do ballot initiatives enhance the democratic process, or do they skew the agenda by reflecting the concerns of special interests and wealthy individuals who are able to place measures on the ballot? It may well be that direct democracy produces both outcomes.

DANIEL A. SMITH
University of Florida

Deliberative Politics in Action: Analyzing Parliamentary Discourse *by Jürg Steiner, André Bächtiger, Markus Spörndli, and Marco R. Steenbergen. New York, Cambridge University Press, 2004. 206 pp. Cloth, $70.00; paper, $28.99.*

Deliberative democracy is no longer a topic for political theorists only. Jürg Steiner, André Bächtiger, Markus Spörndli, and Marco R. Steenbergen offer "a helping hand" (p. 42) to the theorists by empirically investigating real-world deliberations. Their aim is to measure and compare the quality of deliberation in parliamentary debates and to investigate which institutional factors promote deliberation and what consequences deliberation has in terms of outcomes. Although the study finds that institutional design matters for the quality of deliberation and that deliberation makes unanimity more likely, it finds no relationship between deliberation and substantive outcomes or social justice.

An important contribution of the study is that it investigates not merely talk but deliberation. To distinguish deliberation from talk, the authors rely

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on Jürgen Habermas's ideal of rational discourse, on the basis of which they construct a "discourse quality index" (DQI) to measure the quality of parliamentary debates in Germany, Switzerland, the United Kingdom, and the United States.

The DQI is the central analytical tool of the study, and only if it is used well can the authors claim to measure "what philosophers understand by deliberation" (p. 165). The DQI is composed of seven elements: degree of free and equal participation, level of justification, content of justification, three forms of respect, and constructive politics or willingness to seek consensus. When it comes to the empirical investigations, however, the authors omit the first element. "For parliamentary debates . . . this dimension is not very problematic since members of parliament have formally established rights of participation" (p. 57). But that is to exclude an essential element of the deliberative ideal. Deliberation is reduced to being a matter of whether participants speak respectfully to each other and give sophisticated justifications for their demands. The shortcoming of the analysis is that it ignores what is *not* discussed and who is *not* heard. Informal and subtle forms of exclusion and silencing are disregarded. The idea of substantive (not merely formal) free and equal participation stands at the core of the normative concept of deliberation, and it is unconvincing that it is irrelevant for parliamentary debates.

This objection relates to another serious flaw of the book: the authors claim to make a contribution to the debate about deliberative democracy, but even if their study has something to say about deliberation, it has nothing to say about democracy. It might be thought that deliberative quality and democratic responsiveness are two separate and competing values, but that is questionable. The quality of deliberation cannot merely be measured in terms of logical consistency and respect. It is possible to give sophisticated arguments and listen respectfully to other parliamentarians and at the same time ignore the interests of segments of the population. Regarding institutions, the recommendation of grand coalitions disregards marginalized voices. The quality of a discourse in Habermas's sense depends on whether the needs, interests, and values of all those affected have been articulated and considered. This aspect of the philosophical concept of deliberation has important democratic implications that are ignored in the DQI, for which reason it risks moving deliberative democracy in an elitist direction.

Deliberative Politics in Action contributes some important insights into the institutional conditions of deliberation. But I wonder whether the recommended institutional factors—"consensus institutions, the presence of veto players, debate in second chambers, and debate in non-public arenas" (p. 135)—contribute only to sophisticated justifications and respect, or also to truly free and equal participation.

CHRISTIAN F. ROSTBØLL
Arizona State University

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Doing the Right Thing: Collective Action and Procedural Choice in the New Legislative Process *by Lawrence Becker. Columbus, Ohio State University Press, 2005. 164 pp. $39.95.*

Congress is constantly challenged to address important national issues. However, the institutional interest to solve problems often conflicts with the particular interests of legislators. For example, the nation needs a rational allocation of military bases, but no legislator wants the base in his/her constituency closed. We need a rational trade policy, but no member wants the industries in their constituency to face undue competition.

How can Congress meet these challenges without succumbing to the many traps and delays that exist in the legislative labyrinth? In *Doing the Right Thing: Collective Action and Procedural Choice in the New Legislative Process*, Lawrence Becker persuasively argues that the answer lies in understanding extra-congressional legislative procedures. These procedures "grant formal power to craft the specifics of particularistic costs to ad hoc institutions outside of Congress and, in some cases, to impose those costs without explicit congressional approval" (p. 2). Congress tends to employ these procedures when four conditions are met: first, the costs of the outcome are geographically concentrated; second, the policy area is narrow in scope; third, no legislative leaders are championing the issue; and fourth, a large number of groups will suffer from the outcome. Finally, the chosen procedure must "conform to elite and public opinion, the institutional context in the given policy area, and the electoral calendar" (p. 9).

Becker tests his theory using four case studies—military base closures, nuclear waste disposal, the North American Free Trade Agreement (NAFTA), and tax reform—that provide a range of environments within which Congress has or has not employed extra-ordinary procedures. For readers who have studied these issues only through the popular media or by skimming academic offerings, the case studies often burst popular notions about the way Congress delegates authority. For example, the Base Realignment and Closure Commission received a broad mandate to recommend base closures, but the Commission's enacting legislation also contained specific guidelines that worked to rule some bases out of bounds. Foreign bases were placed off-limits, and large bases were generally untouchable because any closure had to recoup its costs within six years, a tall order, given the costs associated with cleaning and relocating large bases. However, the key component of the popular story remains central to this case. Congress empowered an outside commission to do a job that Congress itself could not accomplish, and then constrained itself from interfering in the Commission's recommendations by requiring that they be adopted in a single up-or-down vote.

Although base closure is a classic case of extra-congressional procedures, there are other means of addressing difficult problems. In the 1986 tax reforms, a combination of unique committee and legislative procedures resulted

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in a successful outcome. For NAFTA, Congress delegated fast-track authority to the president, again limiting the ability of Congress to change an outside actor's policy choices. The case of nuclear waste disposal is especially helpful for appreciating how time and geography can lead to a traditional legislative solution to a problem. Becker notes that a strong political champion and the narrowing of possible sites led to a majority of members "ganging up on the weakest member of the herd" (p. 62), the state of Nevada. The uniqueness of certain components of this case illustrates the difficulty of using traditional legislative processes to address serious problems.

Today, the nation again faces a range of severe problems, from the fiscal deficit to the near bankruptcy of Medicare. With the current dysfunction on Capitol Hill, solving these problems will require thinking outside the box and overcoming the ever-present collective action problem. If a legislative staffer were to read this book, he/she might find the correct tool for addressing these acute problems.

THAD E. HALL
University of Utah

Power, Knowledge, and Politics: Policy Analysis in the States *by John A. Hird. Washington DC, Georgetown University Press, 2005. 240 pp. $26.96.*

In this book, John Hird has done policy analysts throughout the nation—note that I do not restrict his purview to the Washington DC policy environs—a genuine service in terms of theory and practice and institutions. Using the proverbial "natural laboratories" provided by the states, he has asked a series of insightful questions, such as just how do clients view the policy analyses provided them by their (respective) states' nonpartisan research organizations (NPROs)? Are the NPROs worthwhile investments to the states' body politic (that a few state governments have no NPROs is only one indication of their worth)? How should state-level policy analysts and their institutions best legitimate themselves? And, of course, what is the relationship of politics and power, or, as Aaron Wildavsky would have phrased it (*Speaking Truth to Power: The Art and Craft of Policy Analysis,* Boston: Little Brown, 1979), how do both communities configure "speaking truth to power"?

Hird draws upon the sadly neglected literature of knowledge utilization (best exemplified by Carol Weiss) to frame many of his questions, and then sets them in theoretic bases informed by distributive theory, principal-agents theory, and information theory. He has tirelessly gathered and analyzed data from fifty states' NPROs (or seeming NPROs, because not all states have such an organization) and hundreds of individual state legislators and other relevant actors, using both questionnaires and telephone interviews. His findings sometimes reflect "conventional wisdom"—for example, states with larger

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NPROs often engage in more-sophisticated analytic exercises—and many things decidedly less than intuitive, or what Hird (justifiably) calls "nuanced." The latter are most often reflected in Hird's recognition that the necessary "glue" between state analysts and legislators is most often measured in terms of "personal trust" (not easy under the regimen of term limits), often molded by personal (rather than written) communications.

The overall findings of Hird's analysis in terms of knowledge utilization are mixed. In his words, "NPROs are perceived to be decidedly ineffectual in bringing new ideas and perspectives to state policymaking, although stronger NPROs do this better than lesser ones" (p. 196). Of course, state legislators clearly decide what level of policy advice they desire, thus effectively insisting on the level of policy analysis they receive. Still, it is important to realize that most legislators (and NPRO representatives) are quite pleased with the materials their NPROs deliver and, on the analytic margins, consider it to be useful. Hird also suggests that the more politicized the state's arena or the more it approaches a one-party state, the less likely is it for legislators to find NPROs' contributions important.

Hird examines the issue, raised by John Dryzek and others, that policy analysts have garbed themselves in the mantle of policy expertise and, as such, neglect the constraints of democracy in designing public policy. In this regard, he is optimistic that the institutional roles established for policy analysis effectively all but force democratic tendencies upon analysts; they must communicate carefully and thoroughly to legislators to be taken seriously, thereby self-limiting the garments of the analytic (or issue-area) priesthood. The downside to this characteristic, of course, is that NPROs, in producing a homogenized body of consensual "fact," might "fail to provide important perspectives and critical reviews that may not reach legislators . . ." (p. 209), that is, fail to provide the basic analytic insights they have been hired to articulate.

In closing, I wish Hird had spent a little more time discussing specific states' experiences rather than dealing mainly in aggregates, especially because he stresses the importance of the relationship between political institutions and NPROs. And perhaps data from the National Conference of State Legislatures (which acts as a consulting house for the state legislatures) should have been included. But these are details that should not undermine the fact that Hird has produced a book of great merit and insight.

PETER DELEON
The University of Colorado

Housing Segregation in Suburban America since 1960: Presidential and Judicial Politics *by Charles M. Lamb. New York, Cambridge University Press, 2005. 320 pp. Cloth, $70.00; paper, $24.99.*

Any examination of residential segregation in the United States must confront a seeming anomaly: despite the civil rights revolution, a broad trend

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toward greater equality, and the palpable lessening of racial hostilities, the persistence of residential apartheid remains a prominent feature of American life. Increasingly, scholars have focused attention on the role of the federal government—from the New Deal to the present day—in accounting for the phenomenon's resilience and durability. In *Housing Segregation in Suburban America since 1960*, Charles M. Lamb manages to sharpen that focus even while expanding the context within which the problem is viewed.

Lamb's argument is easily stated. In the late 1960s and early 1970s, President Richard M. Nixon's preoccupation with foreign affairs afforded George Romney, his Secretary of Housing and Urban Development, the latitude to pursue desegregation initiatives in the typically white suburbs that ringed the nation's aging, minority-dominated metropolitan cores. Romney tried to launch his program without the administration's approval and, in fact, much to its dismay. Nixon subsequently centralized control over domestic policy in the White House, thus preventing any such future acts of political opacity and lending aid and comfort in word and deed to those who favored a racially segmented status quo. Nixon did more than solidify what the author calls the "Northern flank" of his "Southern strategy." In turning his back on Romney's moderating impulse, Nixon bequeathed an institutional legacy that preserved his segregationist policies. This was particularly evident in the placement of ideological confederates in every level of the federal judiciary, including the U.S. Supreme Court. With apparent predictability, the administration's appointees brought forth a stream of decisions that catered to its suburban constituency. If the analysis of the pertinent legal principles and precedents makes the second half of the book less than scintillating reading, it does succeed in driving the point home.

Lamb's spotlight on federal policy, the White House, and the judiciary is welcome. But shadows remain. First, as he points out on several occasions, Nixon's political strategy depended upon the arrival of his carefully cultivated suburban constituency by the 1970s; but in taking its presence for granted, Lamb offers a narrow chronology that overlooks a determinative federal role in the 1940s and 1950s and thus probably overstates Nixon's ultimate influence. The author is closer to the target in asserting Nixon's importance in ratifying decisions made earlier by others and rendering them nearly irrevocable. His truncated chronology also obscures the shift of resources from "have-nots" in the central city to business and the suburban middle class (visible earlier in the transition from redevelopment to renewal and, later, in revenue sharing) even as it precludes other courses of action. The real opportunity to choose another path, in fact, may well have been lost earlier when whites themselves were desperate for both housing and government assistance—and before the postwar building boom encased their racial predilections in cement.

Finally, if Lamb's archival research is enlightening—and largely convincing—there remains a disturbing absence of black voices here. Nixon's cynical

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racial appeals articulated a "white" agenda that faced less internal opposition than reasonable observers might have expected, given the growth of postwar liberalism. African Americans, on the other hand, found themselves divided by the nuanced, strategic implications of integration, nondiscrimination, and self-determination. And there were always those who were willing to settle for the status quo while others never assigned residential segregation a very high priority on the civil rights agenda. The federal government, in short, encountered less resistance and received more help in maintaining the racially divided metropolis than anyone might have guessed.

ARNOLD R. HIRSCH
University of New Orleans

Morality Politics in American Cities *by Elaine B. Sharp. Lawrence, University Press of Kansas, 2005. 243 pp. Paper, $19.95.*

Students of urban politics have long been conflicted. The unique character of city politics and policy making is central to the field, but the slippage of urban studies to the margins of American political science is strongly criticized. As "culture wars" and the "blue state/red state" division become the staples of political journalism, social scientists suggest that this new cultural cleavage has replaced social class as the driving force in U.S. politics, and the role of the localities in managing these new conflicts is increasingly salient.

Elaine Sharp and her six research associates examine how cities vary in how they handle decisions on a set of morality controversies, defined as issues in which the main stakes involve religious beliefs or other basic convictions. Ten (of fifty-two) cities with populations of 300,000 or more in 1980 were chosen for the study on the basis of maximizing variation in terms of local culture, form of city government, and viability of the local economy. All decisions involving a set of five morality issues—abortion, legalized gambling, the sex industry, gay rights, and drug treatment innovations—are included. The study draws upon demographic data, newspaper archives and other documents, and interviews with government officials and issue activists. The result is a series of rich and fascinating mini–case studies that provide a historical and political context not possible in quantitative analysis.

Morality issues do not obviously fit within the dominant paradigms of urban scholarship—protecting the economic well-being of the city and regimes of governing coalitions based on material stakes. But in considering four alternative explanations for the variability among cities in decision making on the same moral issue, Sharp finds that the political economy perspective is best for understanding two of the five issue areas. The city subculture (conventional or unconventional morality) best explains drug issue, gay rights, and abortion decisions; the city economy (declining or growing) best explains decisions on gambling and the sex industry (and, in some cases, has an impact

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on gay rights). Explanations based on the formal institutions of urban government and on the intergovernmental context of federal and state laws, court decisions, and mandates are not uniformly helpful in understanding decision making. Morality issues are not all the same. Findings suggest that there are "pure morality" issues, such as abortion access and protest, drug courts, and needle exchange programs, that are grounded solely in moral arguments. The economic interests of service providers are not a factor. "Material morality" issues such as casino gambling and sex business (prostitution, nude dancing clubs, and adult shops) involve material benefits and economic stakes. Gay rights are less clear-cut, in that industry stakes trigger opposition to domestic-partner benefits policies but usually not to gay pride events or civil rights antidiscrimination ordinances. Conversely, the quest for "cool"-city status and high-tech industry leads economic interests to support gay rights.

A number of other provocative arguments are offered regarding urban democracy. To wit, public officials respond to the values of the general public, not mobilized special interests, in forming "pure morality" policies. "Material morality" policies are elite-dominated, shaped by industry interests with economic stakes. Mayoral leadership only rarely matters, perhaps because the distinction between reformed and unreformed government no longer applies in today's hybrid structures. The impact of mayors and councils here may also be weakened by the role of county officials and public health and criminal justice bureaucracies. Finally, the variation among states on the five issues is minimal; where differences exist (on abortion and gambling) they do have an impact. But states may no longer be the "laboratories of democracy" that they once were.

JANET K. BOLES
Marquette University

The Urban Origins of Suburban Autonomy *by Richardson Dilworth. Cambridge, MA, Harvard University Press, 2005. 280 pp. $49.95.*

Richardson Dilworth's examination of the origins of metropolitan fragmentation in the New York City region presents a persuasive case that divisions between central cities and autonomous suburbs long predated the acknowledged urban crisis of the post-World War II period. He contends that the linkages between public policies of infrastructural development and political battles over suburban annexation proved determinative in sorting out municipal boundaries during the late 1800s and early 1900s. Whereas many other scholars have attributed metropolitan fragmentation primarily to government policies and suburban pressures that established racial segregation and economic homogeneity, Dilworth instead highlights infrastructural factors such as water and sewer services and the suburban backlash against urban corruption. The book employs rational-choice theory to emphasize the role of "private benefits" in shaping the

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development of "public goods" such as infrastructure systems (p. 11). Dilworth argues that city leaders pursued policies of suburban annexation primarily to secure the personal financial rewards available through controlling land development and public works projects. Suburban residents favored annexation by the central city only when incorporation proved necessary for obtaining adequate services, but otherwise fiercely defended their political independence.

Dilworth portrays "suburban autonomy . . . as a product of city government policy and thus an inherent part of urbanization" (p. 4). The heart of the book explores this claim through four case studies situated in New York and northern New Jersey. In the 1870s, New York City's expansionist agenda provided the competitive threat that spurred infrastructural development in Yonkers, making possible its preemptive incorporation as an independent city with sufficient services. Two decades later, New York City overcame substantial suburban resistance to higher taxes and Tammany Hall graft in the great consolidation of 1898. Although annexed municipalities such as Flushing and Queens had already developed their own infrastructure systems, the state legislature's consolidation mandate helps explain an episode that otherwise would contradict Dilworth's model. The final two case studies explore the failure of annexation strategies in Jersey City and Newark, where urban competition and corruption galvanized nearby suburbs to develop their own infrastructure systems in order to maintain political independence. Dilworth concludes that "infrastructural development facilitated suburban autonomy and metropolitan fragmentation and laid the groundwork for the 'urban crisis' of the twentieth century" (p. 110). Absent from this equation are the many metropolitan service districts of twentieth-century origin, often chartered by state governments to provide the transportation networks and infrastructure for economic growth, that have facilitated suburban sprawl without challenging suburban exclusion.

The chronological scope of this book provides a welcome corrective to the conventional focus on the postwar era of mass suburbanization as the catalyst for metropolitan fragmentation, but Dilworth's thesis also displays some of the limitations inherent in the compression of history into a single theoretical model. Although he does not explicitly endorse the "public choice" stance that metropolitan fragmentation represents a desirable way to provide efficient services through intercity competition (a position that ignores or discounts the relationship between exclusionary public policies and race/class segregation), Dilworth's account does downplay the extent to which "suburban infrastructural development was closely tied to the development of suburbs that were small enclaves for the affluent" (p. 105). The focus on the New York region also reinforces a Northeastern/Midwestern bias evident in much of the suburban literature that fails to consider the many metropolises (especially in the Sunbelt) where tools of annexation and consolidation remained available to twentieth-century policy makers. Still, this book provides a compelling reminder that key elements of the structural foundations of the contemporary

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urban crisis can be traced back to infrastructural policies and annexation showdowns that happened a century ago.

MATTHEW D. LASSITER
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Press "ONE" for English: Language Policy, Public Opinion, and American Identity *by Deborah J. Schildkraut. Princeton, NJ, Princeton University Press, 2005. 264 pp. $35.00.*

In this well-written and engaging book, Deborah Schildkraut argues that competing images constitute distinct conceptions of American identity and that all of these must be incorporated into analyses of public support for and opposition to ethnicity-related policies such as official English. Relying on theories of American identity advanced by political theorists, with confirmatory support from polling and survey data, Schildkraut identifies three conceptions of national identity: the liberal tradition, the civic republican tradition, and the ethnocultural tradition. To this list, she proposes the addition of a fourth conception, which she labels the incorporationist tradition. To better understand how these conceptions, individually and interactively, might be applied by individuals in assessing particular policies involving language, Schildkraut did a content analysis of the discourse of fourteen focus groups that were convened in New Jersey in 1998. She did qualitative and quantitative analyses of these data to show how people justify attitudes toward official-English laws and bilingual education. Schildkraut provides support for previous claims in the literature about the importance of the liberal and civic republican traditions of American identity, while also showing that the same conception may be invoked by both supporters and opponents of a particular policy. For example, liberal discourse is used to justify support for making English the official language when the belief that a command of English is essential for economic self-sufficiency and success is emphasized; on the other hand, liberal opposition to this policy focuses on civil rights and freedom of expression. Another interesting (although not surprising) finding is that combinations of different conceptions of American identity (which Schildkraut labels conceptual hybridization) shape both support for and opposition to language policies, and that the interplay between identity and opinion will vary from issue to issue. Finally, she finds that attitudes toward complex issues, such as bilingual education, are less influenced by conceptions of American identity than are attitudes toward abstract or symbolic issues, such as declaring English the official language.

There is a lot of detailed and very interesting analysis about the relation between conceptions of American identity and how individuals respond to official-English policies, reflecting differences in self-identified ethnicity and race, among other characteristics. What is especially interesting is the predictive association between the ethnocultural tradition and attitudes toward

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official English. It turns out, according to Schildkraut, that "the only straightforward relationship between identity and language policy preference is that when ethnoculturalism is endorsed, it leads to support for restrictive language policies, and when it is rejected, it leads to opposition" (p. 159). Adherence to an ethnocultural definition of American identity is strongly predicted by age, education, ideology, nativity, and race. The fact that ethnoculturalism is a full-blown conception of American identity suggests that ascriptive attributes of ethnicity and race will continue to play an important role in ethnicity-related debates on immigration and language policy.

Schildkraut raises a number of questions for further exploration. To her list, I would add the question: how do Americans come to believe and internalize civic myths as commonsense and true? If social change in the direction of greater tolerance and respect for cultural and linguistic diversity is to be achieved, then the understanding of *how* conceptions of American identity and American-ness come to be presupposed through processes of indoctrination and social reproduction through the media, institutions of government, and education will need to be investigated by social scientists.

THOMAS RICENTO
University of Texas, San Antonio

Democracy from Above: Regional Organizations and Democratization *by Jon C. Pevehouse. New York, Cambridge University Press, 2005. 262 pp. Cloth, $75.00; paper, $29.99.*

This book focuses on the potentially democratizing impact of political, economic, and military regional organizations from 1950 to 1992. All states are categorized as either autocracies, hybrid regimes referred to as "anocracies," or democracies. These data are then relied on to trace domestic political transitions and to measure the average level of democracy in regional organizations. The key explanatory variable in systematic empirical analyses, as well as in case studies of Hungary, Peru, Turkey, Greece, Paraguay, and Guatemala, is the average level of democracy in the most democratic regional organization to which each state belongs.

The basic argument is that states belonging to regional organizations with higher average levels of democracy are more likely to democratize. The book also deals with liberalization, or movement toward democracy (even if the state in question does not become fully democratic), redemocratization (a return to democracy after a period of democratic breakdown), completion of transitions from partial to complete democratization, as well as the ability of already-democratic regimes to survive. The evidence suggests that states belonging to regional organizations with more-democratic members are more likely to experience political reforms moving in a democratic direction. However, it is the act of *joining* regional organizations with high democratic density that affects the *survival* of democracy.

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Regional organizations are alleged to have a democratizing influence in that they can affect the crucial cost-benefit calculations of political actors within each state. They create arenas within which regional organizations can formally pressure states to liberalize or to strengthen already-existing democratic institutions. They can help legitimize new democratic institutions, or suspend benefits and impose sanctions on regimes that remain authoritarian. They may also provide guarantees of property rights, thus reassuring potentially antidemocratic elements in states moving toward democracy. Finally, regional organizations, such as military alliances, may socialize the relevant elites into accepting democratic norms.

The author deals carefully with competing counterarguments. Perhaps, for example, major powers within democratic regional organizations actually exert the effect attributed to regional organizations. However, the evidence here shows that even regional organizations without major powers are able to promote and protect democracy. The author also controls for such competing explanatory factors as levels of gross domestic product, internal violence, political and military conflict in the region, and the existence of military regimes.

Still, purely domestic political processes might result in victories by democratic political groups that also are inclined to influence their states to join democratic regional organizations. These forces might successfully carry out transitions or defend democratic regimes in a manner that has nothing to do with those regional organizations. The author is aware of this possibility. To guard against it, the membership in regional organizations is observed the year *before* possible transitions. He also reports that states undergoing democratic transitions are not more likely in subsequent years to join regional organizations with high average levels of democracy. That evidence does not, however, eliminate the possibility that political elites in favor of democracy can be successful in political struggles in a manner that does not immediately result in formal changes that are reflected in data on regime types. If these elites also tip the political balance in favor of having their states join democratic regional organizations, they might create a coincidence between membership in such organizations and subsequent democratic transitions that is not really indicative of a causal relationship. Nevertheless, the evidence presented in this book that regional organizations do help to promote and protect democracy is generally persuasive.

JAMES LEE RAY
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Geopolitics and the Post-colonial: Rethinking North-South Relations *by David Slater. Malden, MA, Blackwell Publishers, 2004. 286 pp. Cloth, $69.95; paper, $34.95.*

The representation and counter-representation of group differences are old facts of political life. Yet they remain intriguing, in good measure because they

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can summon the imagination, involve the play of charged imagery, and ignite collective passions. The legitimacy of regimes and the sway of empires depend crucially on their powers of representation and, just as crucially, on their capacity to manage the unpredictable consequences of their representational strategies. Throughout the history of statecraft, European kings, Ottoman sultans, Asian emperors, and Latin American caudillos have employed official image makers whose duties were best fulfilled when they understood that even brilliant success carries risk.

The same applies to subaltern defiance. Solidarity networks helped bring down Poland's Communist regime by appropriating the party-state's own symbolic resources to forge an "us against them" dichotomy that simultaneously united diverse societal groups and arrayed them against the state. But even during Solidarity's most heady moments, its leaders knew not to take the movement's internal unity for granted. Their wisdom was only underscored by the movement's increasing fragmentation after 1989.

Representational politics is complex. David Slater, however, succinctly captures its underlying logic when he writes in *Geopolitics and the Post-colonial* "Linkages between power relations and modes of knowledge give power its potential 'effectivity'"(p. 19). Slater also argues cogently that the "soft power" of persuasion is key to the establishment and disruption of geopolitical paradigms (p. 21). Implicit in Slater's argument is the reminder that the power of persuasion may be soft (and even derided as puff) but not easily amassed. This is a timely message. We tend to treat international regimes, for example, as if they are "assembled" by the powerful, which may be technically accurate, but barely skims the surface. Post-WWII international structures were artifacts of power, but the intangibles that went into their making, most notably the liberal principles of the Anglo-American victors, were rooted in complex historical/cultural processes. Even modernization theory, which sought to make quick, a-historical sense of the glaring differences between the "first" and "third" worlds, was born of the Western political imagination, which, not surprisingly, was shaped by the Western experience.

For good reason, then, Slater scrutinizes the history of the binary oppositions that are integral to the West's powers of persuasion, the elaboration of these oppositions into overarching frames like modernization and neoliberalism, and their role in hegemonic constructions. Although not quite as methodically, Slater also examines counterrepresentations like *Dependencia,* which he views as closely tied to the South's contestations of U.S. hegemony (p. 49). That Slater allows for such contestations is refreshing, as is his broader claim that the "non-West" is capable of political agency and ideational creativity.

Ironically, however, Slater's view of West/non-West relations comes perilously close to mirroring the Western essentialism he deplores. At points, he presents Euro-American cultural, economic, and political expansion as little more than a deepening curse on the "periphery." The third world, by contrast,

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he often depicts as an international dove that has never harbored expansionist designs on Euro-American societies (pp. 8–20, 70–82). Yet Euro-American power has clearly made positive contributions to humankind. Conversely, the non-West is far from dovish. The Ottomans managed to invade Hungary in the first quarter of the sixteenth century, after which they sought in vain to penetrate Austria in hopes of opening a gate to the West. The non-West, moreover, has produced its own essentialisms. Chinese imperial courtiers and intellectuals excelled for centuries at "barbarizing" outsiders; and Japan's expansionist banner once proclaimed both the emperor's divinity and the Yamato's racial purity.

It is problematic to treat countries as unitary blocs. Still, Slater's work is theoretically stimulating, and replete with insights into the discourses of hegemonic power. No serious scholar of international relations can afford to miss it.

CONSUELO CRUZ
Tufts University

The Limits of International Law *by Jack L. Goldsmith and Eric A. Posner. New York, Oxford University Press, 2005. 262 pp. $29.95.*

"International law scholarship," Jack Goldsmith and Eric Posner charge, has long been "dominated by an improbable combination of doctrinalism and idealism" (p. 3). In this study, Goldsmith and Posner seek to implode the idealistic argument that states create and comply with international law for reasons of morality, arguing instead that international law has no effect on behavior outside what is determined by state interest.

To explain international law's emergence and effects, the authors draw from four well-known game-theoretic models. Patterns of regular behavior may emerge from a "harmony game," a simple coincidence of state interest; from cooperation, an iterated prisoner's dilemma in which "legal" behavior is the optimal outcome; from coordination games (for example, the "battle of the sexes"), where international law helps parties avoid a suboptimal outcome; or from outright coercion, where one state forces its preferred position. Each of these models is sufficient to explain customary law, defined simply as "behavioral regularities." To further account for why states might codify such regularities in treaties, the authors also adopt a rational-choice approach: in games involving multiple players, the authors argue, formal law decreases ambiguity, mitigates commitment problems, and resolves multiple equilibria.

In the book's case studies, which range from an examination of wartime neutral shipping rights to a discussion of human rights from Westphalia to the present day, the authors argue that international law emerges from rational interest and not from any genuine moral considerations. For example, as a weak power, the United States was the world's "most ardent defender" (p. 46)

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of neutral rights; however, when strategic goals changed, as in the Civil War, America handily abandoned its principled position. International human rights law, too, follows the laws of rationality, and not morality: depending on conditions, states will preserve or discard humanitarian causes with impunity.

Certainly Goldsmith and Posner's argument serves as a rigorous and clear corrective to normative approaches in international law. But although political scientists may be sympathetic to the study, most will find the argument of limited added utility. Despite their claims to expand on Hans Morgenthau, E. H. Carr, and Thomas Schelling, not much difference exists between the authors' arguments and those of existing international relations theory. Most notably, neoliberal theory, exemplified by the works of Robert Keohane, Helen Milner, and Robert Axelrod, has long argued that international regimes—of which international law is a subset—are largely functions of state interest.

Moreover, Goldsmith and Posner fail to address the puzzles that emerged from neoliberal theory. For example, contrary to their claim that states fail to follow international law if it contradicts their interests, neoliberals contend that international regimes are often "sticky," affecting behavior even when it is irrational. An examination of this path dependence would have proven useful, and it is unfortunate that the authors dismiss this question without substantiation. Similarly, they equate the use of legal rhetoric in international relations with "cheap talk"; rhetoric may signal type or allow for coordination around a focal point, but it is in and of itself causally epiphenomenal. The authors may be right that legal rhetoric does not reveal a state's sincere morality. However, as rational-choice theorists ranging from Schelling to William Riker have argued, even when used strategically, rhetoric has a significant and autonomous causal impact on bargaining outcomes, suggesting that legal rhetoric might indeed constrain the conduct of international relations. Thus, ultimately, although Goldsmith and Posner's study is useful, it also recalls Stanley Hoffman's 1968 essay on the study of international law—to be fruitful, we must move beyond the dichotomy of idealism and realism to explain *how* states "use legal language, symbols, and documents" as means of ordering an anarchic international system.

STACIE GODDARD
Wellesley College

The Future of Arms Control *by Michael A. Levi and Michael E. O'Hanlon. Washington DC, Brookings Institution Press, 2005. 190 pp. Cloth, $44.95; paper, $18.95.*

This is one of the first books I would recommend to people looking for a list of actions that should be taken to prevent another catastrophic terrorist attack. Michael A. Levi and Michael E. O'Hanlon have written an extraordinarily comprehensive survey of policy recommendations for confronting terrorism

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and the proliferation of weapons of mass destruction (WMD). But that understates the major contribution of the book.

Traditionally, the goal of arms control has been to reduce the probability and damage of war and the costs of preparing for war. The key innovation of this book is its argument that "most of all, [arms control] must be an integral part of a strategy toward especially dangerous enemies that establishes transparent criteria for coercive action" (p. 17).

The book replaces the stale debate between pro-arms-control doves and anti-arms-control hawks with a surprisingly happy and commonsensical marriage of the two positions. Arms control can provide the inspections and transparency that will help detect cheating and trigger enforcement. Arms control also provides legal bases for enforcement, which, in turn, can help build the consensus and cooperation that make enforcement that much more powerful and likely to succeed. Instead of being mutually exclusive, arms control and coercive enforcement become mutually reinforcing in helping to limit everything from bioweapons to nuclear materials enrichment.

The authors look to the coerced inspections in Iraq prior to the 2003 war as an example of their proposed policies. They suggest coerced arms control for North Korea, and arms control culminating in attacks on Iran if it does not give up its nuclear programs.

This book is so wide-ranging that it might better be called *Things to Do about WMD Proliferation and Terrorism, and Even Small Arms and Land Mines* instead of *The Future of Arms Control*. The book often reads like a laundry list of wise policy recommendations, ranging from arms control on almost every possible security issue to protecting whistle-blowers. Most of these suggestions deserve more detailed discussion. I wondered, at many points, how the authors would overcome various barriers to their ideas, such as collective actions problems, burden sharing, domestic politics, and different perceptions of threat. Why would governments rewrite their laws or accept inspections if they have not done so already? Who besides the United States is supposed to do the heavy lifting when force is required? This is why it may take a disaster to move forward with many of the excellent suggestions in this book. To be sure, the authors do grapple with some of these hurdles and questions, but all too often they are swept aside. The problems caused by trading depth for breadth do not mean that the ideas within the book are not practical or comprehensive—and sometimes very innovative—but they do mean that those looking for thoroughly presented recommendations or case studies must keep reading elsewhere.

Although written mostly to address current policy problems, the book also aims to sell arms control to a Washington audience that has grown skeptical about arms control, specifically, and the utility of international law, more generally. On this score, the book is a big success because it is nothing if not pragmatic in its hawk-plus-dove mix of recommendations. Levi and O'Hanlon couple arms control and international law to deterrence, coercion, and the use of force in ways that are utterly practical and persuasive. I hope

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that policy makers of all stripes will read this book and realize that arms control is a major arrow in the quiver in the prevention of WMD proliferation and terrorism.

DAN LINDLEY
University of Notre Dame

Mixed Signals: U.S. Human Rights Policy and Latin America *by Kathryn Sikkink. Ithaca, NY, Cornell University Press, 2004. 259 pp. $29.95.*

Kathryn Sikkink has written a careful and illuminating study of the struggle for human rights in Latin America and the U.S. role in advancing or impeding it. Part I of the book deals with the origins and adoption of human rights as a U.S. foreign policy concern. Sikkink makes two important contributions to what is by now a fairly standard account of the origins of the Carter administration's human rights policy in the 1970s. First, she highlights the role of Latin American jurists and diplomats in creating the ideational foundation for human rights policy. Such discourse evolved in the nineteenth and twentieth centuries, personified by Hernán Santa Cruz, Chile's representative to the United Nations in 1946 and one of the principal drafters of the Universal Declaration of Human Rights. Second, in tracing the roots of human rights activism in the United States, she goes back farther in history than have previous accounts, exploring events in the 1960s—not just Vietnam, but also the military coup in Brazil, the ascension of the Greek colonels, and the U.S. invasion of the Dominican Republic—that propelled nongovernmental organizations (NGOs) and congressional liberals to take up the human rights cause.

The second part of the book addresses the effectiveness of human rights policy, identifying "critical junctures" (p. 79)—policy watersheds, in effect—in which a country's leaders set out on one path or another. Sikkink argues that authoritarian regimes make conscious choices about levels of repression, depending on "their perceptions of threat *and* of the costs and benefits of repression" (p. 93), and that public and private statements and actions by U.S. policy makers send powerful signals that influence the cost–benefit equation. She is at her best in developing the Argentine case, drawing on declassified U.S. documents that show then-Secretary of State Henry Kissinger giving a "green light" to the mass kidnappings, torture, and murder of the Argentine generals during the peak of repression. Taking up the "forgotten tragedy" (p. 180) of Reagan administration policy toward Guatemala, Sikkink demonstrates how senior officials, including the President himself, regularly whitewashed the practices of a genocidal regime. At the same time, she takes care to acknowledge that the international isolation of the Guatemalan government "[gave] some of the most reactionary groups a free hand to engage in massive human rights violations" (p. 162).

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The book's most difficult aspect rests with its conclusion that by 1989, "U.S. human rights policy had become an institutionalized part of the U.S. foreign policy apparatus" (p. 185), and that "by 1992 human rights thinking had been inculcated into the decision-making process" (p. 187). She defines as essential aspects of that institutionalization the increasing sophistication of annual human rights reports required by law, the regular interactions between policy officials and human rights NGOs, and the consolidation of human rights bureaucracies in the Department of State and overseas embassies. Although distinguishing between policy process, in which human rights enter the mix, and policy outcome, in which human rights considerations rarely prevail, she nonetheless vastly overstates the case that human rights matter in the conduct of U.S. foreign policy. With the backdrop of Abu Ghraib (acknowledged in Sikkink's book) and efforts by senior Bush administration officials to rewrite U.S. laws prohibiting torture, the statement that "human rights issues . . . have become an integral part of U.S. policy" (p. 208) seems overly optimistic at best. Sikkink wisely cautions that permitting human rights violations in the name of fighting terrorism in the post-September 11 world destroys U.S. credibility and effectiveness in advancing human rights. The fact that this hardly seems to matter to many in Washington would seem to challenge Sikkink's central argument.

CYNTHIA J. ARNSON
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Healthy Democracies: Welfare Politics in Taiwan and South Korea *by Joseph Wong. Ithaca, NY, Cornell University Press, 2005. 209 pp. $39.95.*

Can democracy bring more social equality? This is a classic theme that has concerned social scientists for many generations. Moreover, since the third wave of democratization, scholars have been eager to determine whether democratization has led to more socioeconomic equality in the developing countries. However, although there are many studies focusing on Latin America and post-communist countries, much less attention has been paid to East Asia, which has been characterized by strong developing states and its "growth with equity" model. Joseph Wong's new book, which analyzes health care reform in Taiwan and South Korea, has made an important contribution to filling this gap. It is probably one of the most important books in political science on this topic to date.

Wong begins by contending that there is a conventional wisdom that the introduction of democracy is supposed to hinder welfare state development, and he claims that his contribution in this book is showing that democratization has opened up new possibilities for the further development of health care in Taiwan and South Korea. Democracy not only contributed to the universalization of health care during the period of democratic breakthrough, it also

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led to an increase in welfare in Korea and to the resistance of retrenchment in Taiwan in the late 1990s. However, it is not clear whether the proposition Wong attacked is really the conventional wisdom, inasmuch as many classical and contemporary theories argued exactly what he had shown, that is, that democracy has the potential to produce more equality; thus, the puzzle is why, in many places, democratization has not brought more equality, as was its promise.

A more important question is that if democracy did contribute to more equality, what are the causal linkages? In contrast to the existing explanations, such as the empowerment of the working class by democratization, or that the newly enfranchised middle class has voted for more redistribution, Wong has made an important and novel argument—that is, ideas matter. As he argues, "Democracy promotes the contestation of ideas and thus new conceptions of socioeconomic equity" (p. 26). He uses fascinating data from surveys of politicians and citizens to show that in both countries, beginning in the 1990s, the idea of development was redefined as including more social development, rather than simply economic growth.

Wong also asks a key question for his comparative study: how do different pathways of political transition affect the ways in which social policies are carried out? His answer is that variations in the degree of political competitiveness have a significant impact on how health care reform is initiated: the high degree of competition in the Korean case compelled the Roh regime to implement quick-fix reform, whereas the ruling party in Taiwan had more political latitude in which to plan a more transformative policy. However, although this is not a trivial conclusion, the author falls short in not discussing the broader dynamics of democratization with regard to political institutions and social forces.

This question is particularly crucial in the area of welfare reform, which inevitably involves the politics of class struggle. Politicians may have incentives to promote welfare, as Wong contends, but the question is to what extent their preferences are constrained by business interests or their organized actions. Health policy, in particular, cannot be viewed as typical welfare policy in that, unlike pensions or a progressive tax policy, it involves less class conflict. It is now widely recognized that investment in health is indeed investment in human capital, and is, therefore, in the interests of capitalists. Perhaps this is why health care policy could become an important welfare achievement in those two countries, which have always been development oriented. Research on Latin America has shown that democracy is closely related to spending on health, but not on pensions. This is also true in Taiwan, which does not yet have a national pension plan. Thus, we should expect democracy to have different impacts on different policy areas, and we should be cautious in using health care policy as a case to make a general claim about the relation between democratization and equality.

Overall, despite these problems, Wong has offered new perspectives and a well-crafted analysis of welfare politics in Taiwan and Korea and has built a

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solid foundation for further comparative study with other regions. His book is a must-read for scholars of East Asian political economics.

TIEH-CHIH CHANG
Columbia University

Lessons from NAFTA for Latin America and the Caribbean: A Summary of Research Findings *by Daniel Lederman, William F. Maloney, and Luis Servén. Stanford, CA, Stanford University Press, 2005. 407 pp. Cloth, $65; paper, $29.95.*

The North American Free Trade Agreement (NAFTA) has delivered to Mexico neither modernization nor huge economic losses. The basic lesson about NAFTA demonstrated in this important book is that trade agreements are only part of a process of economic change that, if well managed by complementary reform, can maximize gains over losses.

Careful research design by Daniel Lederman, William Maloney, and Luis Servén presents the dynamic effects of NAFTA ten years on. The study's most salient fast fact is that despite performance similar to the rest of Latin America pre-NAFTA, by the end of 2002, Mexico's gross domestic product (GDP) would have been 4 percent lower without integration, driven largely by productivity gains connected to the agreement.

Evaluating NAFTA's decade is complicated. Economists prefer neat *ceteris paribus* experiments—not Mexico's 1982–2004 messiness. Leading to the 1994 adoption, Mexico pursued incremental, unilateral liberalization. Prior to NAFTA, Mexico had one of the highest ratios of trade volume to GDP, particularly for a large country, making it difficult to separate out the effects of the agreement per se versus long-term liberalization. The authors conclude that rather than causing a radical transformation, NAFTA locked in benefits of trends already taking place pre-1994 and provided incentives for complementary change.

The plummeting of the Mexican peso in 1995 clouded the debate on the welfare effects of NAFTA. Mexicans were worse off as their economy contracted—but did NAFTA help or hurt the situation? *Lessons from NAFTA* suggests that, on balance, Mexico benefited from integration, but the causality is complex. As the authors note, damage to Mexican agriculture was not devastating—but a period of overall growth in the United States and Mexico, increases in land productivity, and agricultural reforms in Mexico facilitated adjustment. Liberalization alone won't work; NAFTA's role was as a catalyst for institutional change. According to the book's commissioned studies, NAFTA did not evidence significant trade diversion from neighbors. However, once again all else equal comes into play, inasmuch as other countries were not idle, instead encouraging trade and investment through export processing zones.

Although non-economists may be put off by the discussion of methodological issues (and may be advised to skip to the conclusions rather than miss

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this important book), the commissioned chapters are a must-read for graduate students and professionals analyzing the impact of trade. Theory and rigorous empirics are skillfully blended to present policy-relevant conclusions. Results are robust to changes in domestic and international performance—and are contrasted to both regional dynamics and internal changes among Mexican states. The authors do not hide unclear results and point to fruitful areas of future research.

Despite its overall positive effects, NAFTA has not been enough to promote a sustainable pattern of economic change for Mexico. The treaty does not, as trade theory predicts (and the authors test), ensure convergence with U.S. factor markets. The authors point to Mexican institutional weaknesses with a tenacious persistence—especially weak rule of law and corruption. They situate trade liberalization under NAFTA—and the potential for a free trade area of agreement or the Central American Free Trade Agreement—in the context of the need for education and innovation policies to maximize the positive potential gains from trade. Nonetheless, the authors do not naïvely offer policy panaceas, noting the limitations of counter-cyclical policy due to credibility, fiscal imbalances, and a narrow tax base.

Within these constraints, they suggest a credibility dividend to countries adopting free trade agreements but do not oversell agreements unaccompanied by institutional reform and innovation-enhancing designs. Liberalizing economics must facilitate transition among industries. The important question is how to transform losers from trade into winners. The authors recommend pensions that move with workers and lower costs of severance. Free trade raises questions about rigidities in labor markets—but reform should be economy-wide, not simply tied to export and import sectors.

The authors do not limit the story to a question of trade, but ask how trade is inserted into a broader spectrum of production and factor market relationships providing effective incentives to growth. *Lessons from NAFTA* is important perhaps less for what it tells us about changes under a free-trade agreement and more for its nuanced and careful empirical investigation of how trade can actually make people better off. This, indeed, is the "big story" of NAFTA and the potential for free trade agreements in the region.

PATRICE FRANKO
Colby College

Negotiated Revolutions: The Czech Republic, South Africa and Chile *by George Lawson. Burlington, VT, Ashgate Publishing Co., 2005. 272 pp. $94.95.*

In contrast to the confident declarations of victory and the promise of a new world order that emanated from many global elites in the early 1990s, we are witnessing today the steady unraveling of post-Cold War triumphalism. It

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is, therefore, no surprise that many observers believe that radical social change will continue to figure prominently on the geopolitical stage in the era of globalization.

One of these observers is George Lawson, who argues in *Negotiated Revolutions* that revolution, as both concept and practice, remains relevant for the contemporary world. Unlike the idealized or vilified revolutions of the past, when revolutions heralded—depending on one's ideological perspective—utopia or barbarism, revolution today wears, somewhat paradoxically, a more moderate face. For Lawson the ideal-type revolution of the present and foreseeable future is the negotiated revolution, in which revolution is not an all-or-nothing event—if ever it was—but rather an elite-controlled or -managed transition in which representatives of the old order and of the new insurgents negotiate that transition (pp. 4, 6).

Negotiated Revolutions is divided into six substantive chapters. The first two are likely to be of interest to specialists, in particular historical sociologists, scholars of revolution, and researchers working in the field of international relations. In these chapters, Lawson has two aims. The first is to contribute to an international sociology that combines the best of international relations and historical sociology; in the former, we find an emphasis on the international that is often under-emphasized in sociology, whereas the latter corrects the tendency of international relations to naturalize its analytical categories (for example, the state) and neglect the role of structure, agency, and historical analysis (pp. 18–22).

The second aim is to revisit the concept of revolution. Lawson outlines three stages in the study of revolutions, the last clustered around the works of scholars such as Theda Skocpol, Barrington Moore, and Jack Goldstone. Although each stage has contributed to our understanding of revolutions—the emphasis in the third stage on structural alignments being particularly important—all share a number of weaknesses as well. First, these schools of thought ascribe inalienable characteristics and essential qualities to revolutions, whereas Lawson argues that revolutions should be seen as "dynamic processes with features contingent on both their world-historical context and their particular social setting" (p. 47). Each school also tends to equate revolutions with newness and violence, whereas, in fact, revolutions are often combinations of the old and the new, and violence can be absent, counterproductive, and present in non-revolutionary forms of social change as well (pp. 50, 51).

The case studies, for which the end of the Cold War is the controlling variable, situate negotiated revolutions within the "openings" in the international system. Lawson has three goals here: to show how these transitions were precipitated and why they were negotiated and, finally, to assess whether they can properly be considered revolutionary. The first is achieved by outlining the long- and short-term causes of each transition and the second by discussing the events or sparks that drove the transition. For the last, Lawson employs historian Eric Hobsbawm's criteria of minimum and maximum conditions of

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success. To meet the former, the revolutionaries must take over and establish state power or its equivalent; for the latter, a new social and legal framework must be created and a new political and economic order institutionalized.

Lawson argues that the transition in the Czech Republic meets both of Hobsbawm's conditions; in South Africa, the minimum conditions; and in Chile, neither. Although all three cases constitute negotiated transitions, only the first two can properly be considered revolutions. Of the Czech Republic he writes, "There was revolution because neither side was prepared to accommodate the other and negotiation because neither was willing nor able to achieve their aims through the use of violence" (pp. 89, 90).

Lawson makes a number of claims that are sure to spark controversy; the issue of whether South Africa meets even the first criterion for revolution, for example, is still hotly debated in that country. His case for the emergence of negotiated revolutions, however, is compelling and the discussion of the three cases well argued. *Negotiated Revolutions* thus marks a valuable contribution to the study of revolutions and social change generally in the post-Cold War era.

TONY ROSHAN SAMARA
George Mason University

Falun Gong: The End of Days *by Maria Hsia Chang. New Haven, CT, Yale University Press, 2004. 208 pp. $25.00.*

One of the most bizarre developments in the history of Communist China was the emergence of the spiritual sect Falun Gong, which culminated in 1999 in massive, seemingly spontaneous demonstrations in Beijing. This short book explores the movement, and the brutal way in which the authorities repressed it.

Maria Hsia Chang begins with a general overview of Falun Gong. There follows a chapter on the history of millenarianism in China, with an explanation of why the Communists are so afraid of such movements. "Having come to power by exploiting China's millenarian tradition, the Communist Party is only too mindful of the potency of such movements" (p. 59). Chapter 3 outlines the sect's beliefs and practices, in a balanced but not particularly flattering way. Falung Gong is portrayed as anti-scientific and often comes across as absurd.

Still, the author writes with admirable restraint. For example, in chapter 4, she details the Communists' indictment of Falun Gong. Although she does so with a minimum of her own commentary, there are places where it is unclear whether the complaints are her own or those of the Communists. For example, in (or after?) a discussion of the Public Security Bureau's findings about the cult, she says, "Instead of being compassionate, [sect leader] Li Hongzhi is disapproving of homosexuals,"—hardly an argument one would expect to hear for the Public Security Bureau. At the end of the chapter, she gives her own dismissive views of the government's case, even saying (without elaboration) that "for almost every one of its accusations against the sect, it can be

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argued that the Communist Party government has been equally, if not more, guilty" (p. 123).

The final chapter comes as a bit of a disappointment. Much of it has little to do with Falun Gong, and there is scarcely any attempt to pull together what the movement is. "Falun Gong is quite innocuous . . . . Although some of the sect's various ideas may seem 'weird,' 'cranky,' 'incredible,' or 'bizarre' to outsiders, by and large its followers are taught to be good people and to uphold high moral standards" (pp. 133, 134). One wishes that the author had dug a bit deeper and had more fully evaluated the creed in terms of its socially constructive and socially damaging characteristics. In particular, the fact that this largely female movement is based on an anti-feminist set of beliefs cries out for explanation and analysis.

This very accessible book is certainly worth reading and recommending to students. It is a valuable resource on the subject, although with a better index, it would have been even more so.

JAMES D. SEYMOUR
Chinese University of Hong Kong

Politics Beyond the Capital: The Design of Subnational Institutions in South America *by Kent Eaton. Stanford, CA, Stanford University Press, 2004. 267 pp. $55.00.*

This ambitious book provides an analysis of the intergovernmental relations of Argentina, Brazil, Uruguay, and Chile. Its historical cross-national approach provides new empirical insights and an important context for studies that focus solely on the contemporary era of decentralization. Kent Eaton incorporates a wide array of theoretical explanations, finding no universal explanation for all of the instances of decentralization and recentralization surveyed, but his detailed historical analysis of the four countries provides some evidence to support almost all of the prominent institutionalist hypotheses regarding the causes of decentralization.

The book is organized chronologically, covering three time periods: from the nineteenth century until the onset of bureaucratic authoritarianism, the period of bureaucratic authoritarian rule, and the contemporary democratic era. Each historical section is divided into two paired comparisons. Brazil and Argentina are paired as bottom-up decentralizers, and Uruguay and Chile as top-down decentralizers. In Argentina and Brazil, governors have historically been very strong, and decentralization generally involved greater transfers of resources. In Chile and Uruguay, decentralization was driven by divisions among national politicians and was largely characterized by changes in electoral laws. The influence of subnational officials within their parties is the main difference between the top-down and bottom-up decentralizers. The importance of partisan strength begs the question of why and how parties and

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electoral systems were set up to benefit subnational actors in some countries and not in others. A historical analysis could have usefully addressed this question.

The central explanatory variables are regime type, economic policy orientation, and presidentialism, although the author also incorporates hypotheses related to the electoral incentives of both subnational and national officials and the partisan strength of subnational officials. Regarding regime type, Eaton finds that democratic governments centralized power in the early part of the twentieth century, but decentralized power in the late twentieth century. The military generals of the bureaucratic authoritarian era centralized power politically, but in some cases expanded the administrative and institutional capacity of subnational units. In the early twentieth century, economic liberals supported decentralization against centralizing state-led development, but in the late twentieth century, some economic liberals feared that decentralization would increase the overall size of the state's involvement in the economy and therefore advocated for greater centralization. The emphasis on presidentialism seems misplaced, because the analysis does not contain any nonpresidential cases. This argument could have been more persuasively packaged as one about divided government and the popularity and partisan powers of the president.

The central conclusion is that politicians seek to either centralize or decentralize not because they have a normative commitment to either, but because it serves as a means to some other end. It may seem obvious that politicians fight over institutions not because they intrinsically care about institutions, but because they think different institutions will enable them get the policies that they want. Nevertheless, given the tendency of institutionalists to emphasize institutions to the virtual exclusion of politics, it is probably worth re-stating. Strategic actors who think they can get more of what they want from state and local governments will favor decentralization, whereas those who think they can get what they want from the national government prefer centralization.

The greatest strength of this book is its empirical scope and detail. The cross-national and historical case study approach demonstrates that there has been variation in intergovernmental relations within and across all four of the countries and that the level of decentralization in the contemporary period is not unique. Although this is a good book, it unfortunately suffers from some sloppy editing that detracts from its overall quality: the names of the Uruguayan Presidents José Batlle y Ordóñez and Jorge Batlle are spelled incorrectly throughout the book.

CAROLINE BEER
The University of Vermont

Rethinking the Rise and Fall of Apartheid *by Adrian Guelke. New York, Palgrave, 2005. 272 pp. Cloth, $75.00; paper, $24.95.*

Why did apartheid in South Africa fall, and why did it fall so quickly and with so little bloodshed? This question has captured the attention of many

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analysts of South African politics. Indeed, understanding the South African "miracle" has become the objective of scholars from many different continents and disciplines. None has addressed this issue so clearly and succinctly as has Adrian Guelke.

This compact book, comprised of eleven chapters, seeks to give the reader an overview of South African history as a means of accounting for the rise and demise of apartheid. Most of the historical account addresses events in the twentieth century, although Guelke expends some effort in providing an outline of the colonial history of the country. A short book like this cannot give a full accounting of all important events in South African political history, so Guelke often walks a fine line between excessive and insufficient explication of major events and eras (with the consequence that, despite the book's overall accessibility, novice readers will on occasion be confused about exactly what happened during many crucial events— the Boer War, for example). Still, as a straightforward political history of South Africa, this book is a valuable contribution.

The central intellectual contribution of this book lies in the assertion that "South Africa's political development during the course of the twentieth century was intimately bound up with what happened in the rest of the world" (p. 218). This simple claim is documented throughout the book, at many stages of South African history, and the argument is compelling. South Africa is different from most African countries, if in no other sense than that the world cares about what happens to the country. The caring is not always noble (as in the exploitation of natural resources), it is often self-serving (as in the West's support of South Africa as a bulwark against communist expansion), but it is sometimes well intentioned and praiseworthy (as in sanctions). South Africa would not have succeeded in building democracy without the courageous efforts of indigenous actors and institutions. But those actors and institutions were virtually always acting upon a world stage, and their success in that role had much to do with domestic politics and the pace of reform. Few countries in Africa have been capable of attracting the sustained attention of the world as South Africa has.

In the final analysis, the author identifies five broad sources of change in the apartheid system:

- changing demography, as in the decline in the white population and the concomitant growth of the African population;
- new economic realities, especially the demise of the migrant labor system so central to the economic success of apartheid;
- ideological/normative pressures owing to the identification of white South Africans with Europe and with Western ideology, resulting in the delegitimation of the racial underpinnings of apartheid and a curious commitment to the rule of law, even when the law that ruled was discriminatory and oppressive;

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- a variety of external pressures, not the least of which was the worldwide anti-apartheid movement; and
- political factors, most notably the triumph of the African National Congress (ANC) and its vision of a multiracial South Africa.

Undoubtedly, these are all terribly important factors, even if these causative variables are themselves often in need of explanation. Why, for instance, was the ideology of multiracialism acceptable to ordinary South Africans, and why did proponents of black domination not have more success with their anti-white gambits? One strength of this book is that it pushes the reader to think analytically, in broad and comprehensive terms, about large-scale processes of sociopolitical change, even if it cannot (as no work can) provide answers to all of the interesting questions that emerge.

A few shortcomings are also apparent in the book. I am surprised, for instance, to see so little attention to South Africa's truth and reconciliation process, especially because many observers argue that the process was crucial to the peaceful transition to democratic rule in South Africa. The analysis is also quite government centered, without detailed attention to the calculations and strategies of political leaders, political parties, nongovernmental organizations, and ordinary citizens. Given the nature of our times, one might have wished for a deeper discussion of the role of terrorism—and the ANC's connection to policies of terrorism—in bringing about social and political change in South Africa. And despite some efforts on this score, the treatment of how F. W. de Klerk so miscalculated the consequences of liberalization in 1990 and onward seems incomplete and is unsatisfying. These are perhaps unfair quibbles, however, about a book so focused and concise, so readable, and so well documented.

Students of South African politics will find this book a useful reference source. Those interested more broadly in political transitions will discover in this book a compact explication of the South African case within the context of broader theories of political change, applicable in many troubled parts of the globe—an important and impressive achievement.

JAMES L. GIBSON
Washington University, St. Louis

Liberal Democracy and the Social Acceleration of Time *by William E. Scheuerman. Baltimore, MD, Johns Hopkins University Press, 2004. 286 pp. $42.00.*

It cannot be denied that the technological advances of the past several decades have accelerated the pace and tempo of contemporary society. Today we enjoy immediate access to global networks of news, analysis, information, and opinion; business is conducted on an international scale in an instant; and political campaigns, although waged over longer stretches of time, are conducted at

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breakneck speed and delivered in up-to-the-minute installments of sound bite–sized slogans, scandals, swipes, and gaffes. Many theorists have commented on—and lamented—the hyperbolic pace of contemporary democracy. According to a familiar script, conditions of modern acceleration undermine the facets of human association that are by their very nature unhurried. For example, marriages dissolve due to the forced estrangement that comes with a fast-paced market culture, and in the wake of their dissolution, families and communities suffer.

Although the social consequences of acceleration have been a mainstay of contemporary theory, little attention has been paid to the decidedly institutional consequences of social acceleration. This constitutes an unfortunate gap in the literature, a gap that William Scheuerman seeks to fill in his new book.

Instead of focusing on hackneyed themes of the dissolution of social capital, Scheuerman undertakes a careful analysis of the temporal assumptions that underlie the core institutions of contemporary liberal democracy, especially the constitutional separation of powers. Drawing his theoretical bearings mainly from John Locke and Charles Montesquieu, Scheuerman engages in a sustained exploration of the temporal orientations of the traditional tripartite institutional structure of liberal democracy. According to this design, the legislative branch functions prospectively, the judicial primarily plays a retrospective role, and the executive acts in and for the present. Scheuerman argues—compellingly, in my view—that "high-speed society privileges high-speed institutions" (p. 45). This means that the temporal acceleration of contemporary society empowers the executive agency of government, rendering the judicial and legislative relatively impotent. The legislative is weakened because "the ever faster pace of social and economic life conflicts with the conventional emphasis on the legislature's necessary reliance on careful, wide-ranging, and time-consuming deliberative exchange" (p. 45). The judiciary is similarly stymied because social acceleration tends to "render the past-oriented orientation of the courts immaterial to the necessities of political decision making because past experience is decreasingly likely to be useful in a world where novelty becomes ubiquitous" (p. 51). In this way, social acceleration creates an imbalance in the traditional separation of powers.

Exploring the implications of this imbalance, Scheuerman examines a wide range of issues concerning rule of law, constitutional change, globalization, and deliberative democracy. Although many of these discussions are detailed and deliberate, Scheuerman is honest about the limitations of his analysis. By his own admission, *Liberal Democracy and the Social Acceleration of Time* is but a first step in the systematic exploration of the impact of technology and speed on traditional institutional design. Given the depth of insight and wealth of suggestion, this book should help to set the agenda for continuing inquiry into this constellation of crucial issues.

ROBERT B. TALISSE
Vanderbilt University

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Environment, Inc.: From Grassroots to Beltway *by Christopher J. Bosso. Lawrence, University Press of Kansas, 2005. 194 pp. Cloth, $35.00; paper, $15.95.*

In the fall of 2004, a widely disseminated essay by Michael Shellenberger and Ted Norhaus chided the contemporary environmental movement for failing to make significant progress in the face of a hostile presidential administration, for being unable to find common ground with other organizations, and for relying upon what the authors termed "outdated concepts and exhausted strategies" ("The Death of Environmentalism," available at www.grist.org). Christopher Bosso's study of environmental organizations as part of the larger advocacy community is considerably more substantive and persuasive than prior broad-brush historical treatments or the debate over environmentalism's alleged demise. What makes the book noteworthy is that rather than serving as a response to the current blame game, it systematically examines the factors that have made the environmental movement an enduring, resilient, stable, and established part of contemporary political life. What might make the book less useful is what may be perceived as his overly optimistic, almost Pollyanna-ish vision of the movement's organizational future.

Nomenclature is important in how Bosso explains the parameters of his study. In addition to examining the nation's major environmental organizations as constituent parts of a specific advocacy community, he uses the macro level to analyze them as organizations—"nonprofit entities" in tax code language, or "species" in the patois of biologists—rather than as groups "to underscore the point that many of them are not the classic membership groups on which theories of representation rest" (p. 11). Chapter 2 provides an explanation of why it is important to know how advocacy organizations develop, followed by a brief history of the major conservation organizations, from the Progressive Era through the 1970s. Nothing in this chapter is new or noteworthy, but it is well packaged for those needing a refresher on the sequence of advocacy group development.

One of the more intriguing discussions comes in chapter 3, where Bosso distinguishes between the development of dissident organizations (formed because a leader or leaders left an existing organization over fundamental differences in priorities, tactics, or management style) and niche seekers. He defines the latter as organizations in which entrepreneurs saw opportunities to inhabit policy or ideological niches to pursue tactics that were not being exploited optimally or at all by an existing organization (p. 49). He also lays out a spatial map of the advocacy community, placing organizations on an ideological continuum from "radicals" to "accommodationists" based on the scope of their agenda, and categorizing them as keystones, sectoral players, or niche players.

Chapters 4 and 5 chronicle the management and strategic changes that have taken place within the environmental advocacy community, from the emphasis on increasing individual dues and contributions for organizational

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survival and flexibility to the often-criticized trend toward professionalism and development of a permanent presence in Washington DC. There is a well-documented analysis of the ways in which organizations diversify their funding sources and grow their membership base, including the controversial issue of accepting corporate donations. Other strategies, such as countermobilization and cyberadvocacy, are briefly mentioned, as is the attempt to return to a grassroots base.

The final chapter questions whether advocacy groups have made a difference, and Bosso concludes that by maintaining a presence, environmental organizations have led Americans to "embrace the legitimacy of environmental values despite all the contradictions in their belief system" (pp. 154, 155). He predicts that although the environmental movement has evolved into a mature and very typical American interest group community, there is no guarantee that some existing organizations will be around in a decade or two.

JACQUELINE VAUGHN
Northern Arizona University

Durable Disorder: Understanding the Politics of Northeast India *by Sanjib Baruah. New Delhi, Oxford University Press, 2005. 276 pp. $35.00.*

India has been receiving positive press in recent years. The country has sustained annual average rates of economic growth of about 4 percent per capita over a period of twenty years, rates of poverty have been falling, three new states emerged in 2000, the Punjab crisis has largely died away, and regular elections are held at central, state, and local levels.

The fact that India has held together, however, should not blind us to the role of state-directed violence in securing its boundaries. The crisis in Kashmir is well known. What is less often recognized is that New Delhi has been active for over fifty years in creating the conditions for what Sanjib Baruah calls "durable disorder" in the northeast of the country—in Arunachal Pradesh, Assam, Meghalaya, Mizoram, Nagaland, and Tripura. New Delhi continues to use military might and counterinsurgency tactics to fight more than one hundred militias in these states. In the process, lives are lost, oppositional figures are executed in "encounters" with paramilitaries, and human rights are trampled underfoot. The central state's overriding concern is to protect the territorial integrity of the country. Nagaland was created in 1963, one year after China invaded India's northeast frontier. As early as 1949, however, India's Deputy Prime Minister, Sardar Vallabhbhai Patel, had responded to reports that the erstwhile "native state" of Manipur might not wish to join the Indian Union by asking, "Isn't there a brigadier in Shillong?" (p. 59). The military option has never since been put to bed.

Sanjib Baruah recounts this story and many others in an important and well-written collection of essays on the politics of India's northeast. Governments

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there have generally failed to raise taxes or other revenues from developmental activities. They rely instead on massive infusions of funds from New Delhi, large parts of which are looted by well-placed members of the local state, as well as by Mafiosi and militias, the three groups not being mutually exclusive. Unable, then, to provide for employment or law and order, governments find themselves competing with the militias to fill the political vacuum. Struggles over resources, services, and patronage break out and are politicized along a series of insider ("tribal") and outsider ("immigrant") distinctions that hark back to British days. Matters have been made worse by the decision of the post-colonial state to allow full citizenship rights only to members of the Scheduled Tribes. Members of other groups are treated not as citizens but as denizens of independent India.

In the end, Baruah concludes, the evident disorder of the northeast is set to endure. New Delhi will pump in money and troops to defend the border. It also takes care to play the politics of divide and rule. New stakeholders are brought on board with government largesse. What it fails to recognize, Baruah makes clear in several essays, is the legitimacy of the politics of identity that has been mobilized by groups including the Naga People's Movement for Human Rights. New Delhi is inattentive to the politics of difference, except when expressing frankly racist views about the *junglees* who live in the hills. This being so, it is odd that Baruah uses much of his last chapter to praise the Promethean visions of Jeffrey Sachs. After telling us that the peoples of the northeast have suffered terribly at the hands of a militaristic and developmental state—a state that sought to nationalize space (chapter 2)—Baruah looks to road building and market-led economic growth as antidotes to the problems of a land-locked region. It is an odd punch line to an important and otherwise thoughtful book.

STUART CORBRIDGE
London School of Economics

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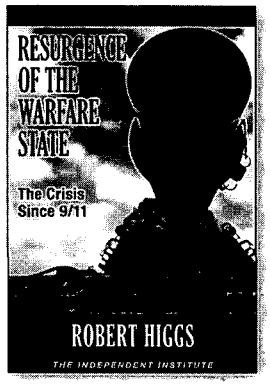

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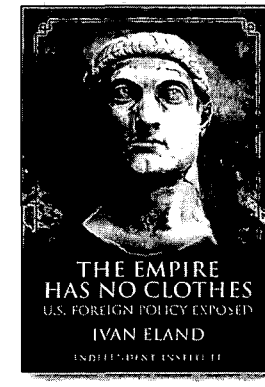

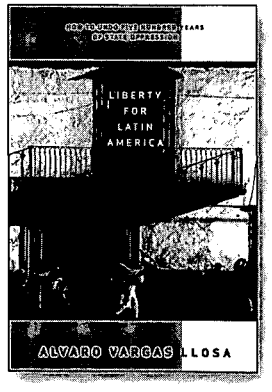

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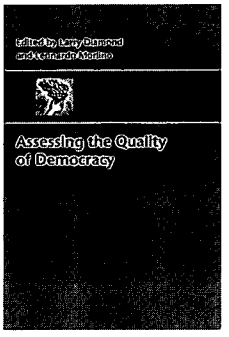

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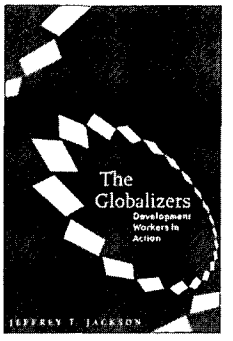

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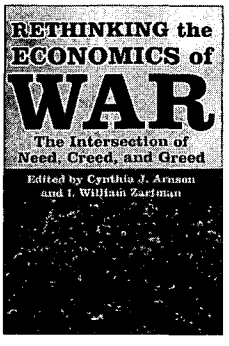
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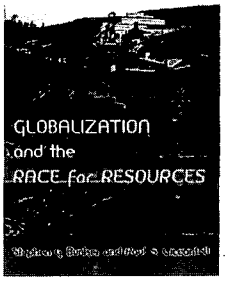

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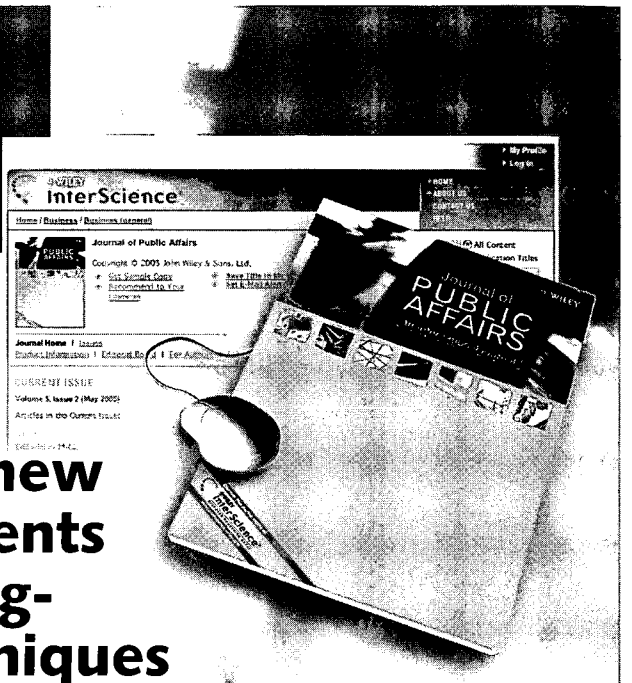

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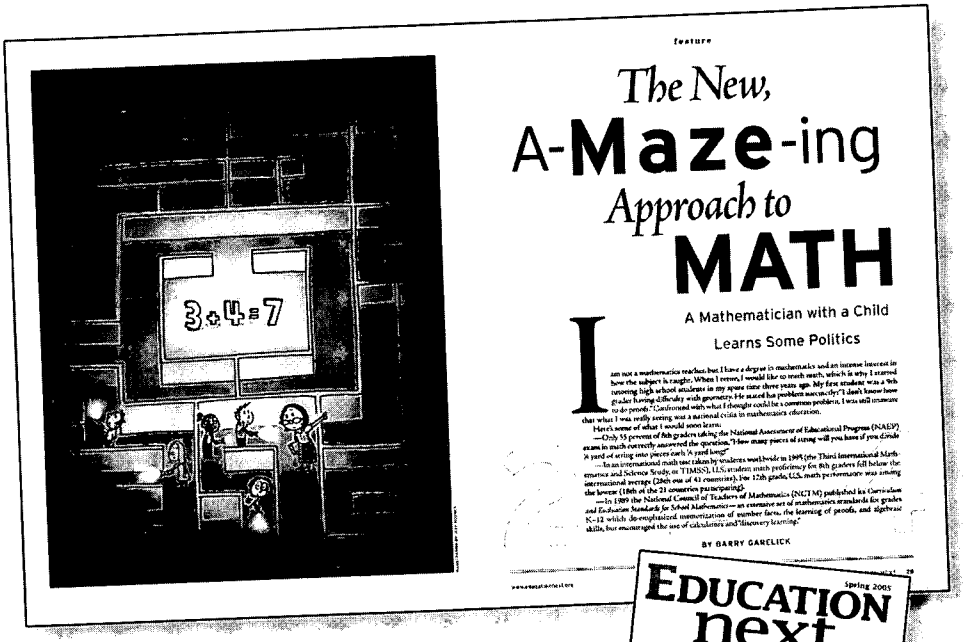

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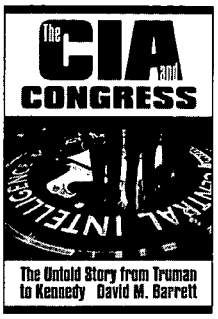

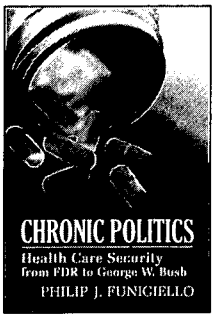

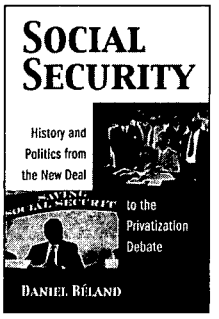

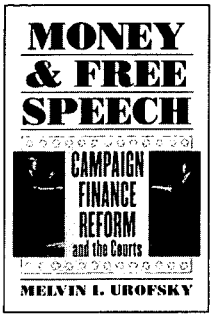

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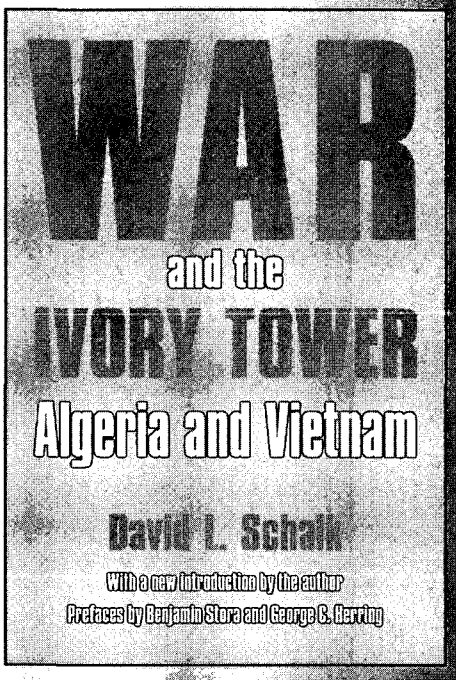

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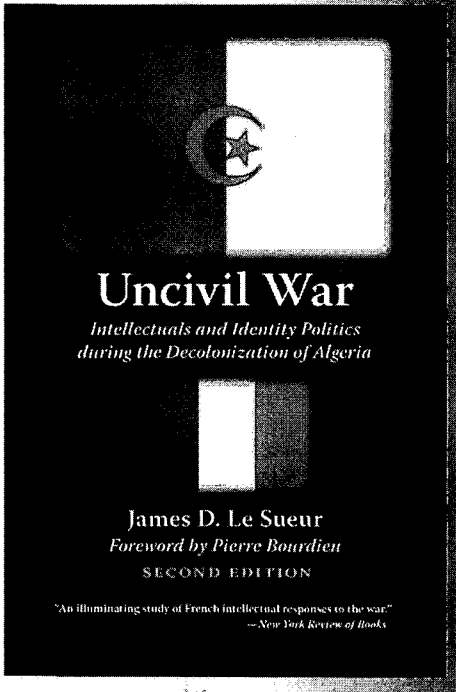
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